



**AGENCY OF HUMAN SERVICES**

**DEPARTMENT OF DISABILITIES, AGING AND INDEPENDENT LIVING**

Commissioner's Office  
280 State Drive  
HC 2 South  
Waterbury VT 05671-2020  
Voice (802) 241-2401  
Fax (802) 241-0386

TO: Legislative Committee on Administrative Rules (LCAR)  
FROM: Stuart G. Schurr, Esq., General Counsel *SGS*  
Department of Disabilities, Aging & Independent Living (DAIL)  
DATE: August 29, 2024  
SUBJECT: 23P-044; **Second Updated** Final Proposed Rule; *Residential Care Home and Assisted Living Residence Licensing Rules.*

Following its initial filing of the Final Proposed Rule, the Agency of Human Services (AHS)/Department of Disabilities, Aging, and Independent Living (DAIL) made additional changes to the text of the Rule for the Committee’s consideration. During its first appearance before the Committee, stakeholders identified a number of remaining concerns with the final proposed rule. As a result, the Committee directed DAIL and the stakeholders to meet and attempt to resolve these outstanding issues. DAIL received additional written comments from, and met with, representatives of the Vermont Health Care Association, the Office of the Long-Term Care Ombudsman, and Vermont Legal Aid’s Elder Law Project.

I. Additional Changes to Text of Final Proposed Rule

Further changes, as reflected below, were made to the Final Proposed Rule, and updated clean and annotated versions are attached hereto.

<b>Final Proposed Rule, as submitted to Secretary of State</b>	<b>Description of Change</b>
Cover Page	Change effective date to “April 1, 2025”
2.2 definition of “Admission”	Added, “ <b>Admission</b> ” means the point in time at which a resident moves into a facility that has agreed to provide services. “Moves into” includes the period immediately preceding when a facility begins providing services, such as personal care, general supervision, medication management, or nursing overview, to the resident.”

2.2 definition of “Delegation of nursing tasks”	Deleted, “as long as the registered nurse (or license practical nurse under the direction and oversight of the home’s registered nurse) provides proper training, oversight, and monitoring, and for which the registered nurse retains responsibility.”
2.2 definition of “Emergency discharge” (VLA)	Amended to read, “ <b>Emergency discharge</b> ” means an immediate, unexpected discharge from a home that is necessary for the health and safety of the resident, or when a natural disaster or emergency necessitates the evacuation of the residents, the resident presents an immediate threat to themselves or others, or the process is ordered or permitted by a court.” This tracks the language in 5.3.b (1).
2.2 definition of “ERC”	Modified to read as follows: “ <b>ERC</b> ” means Enhanced Residential Care, a 24-hour package of services provided by an approved Level III Residential Care Home or an Assisted Living Residence.
4.4.d	Deleted
4.9.b	Deleted, and re-lettered remaining subsections of 4.9
4.13.e	Added, “At any time after the licensing agency issues a notice of intent to impose sanctions,” and changed “five (5) business” to “ten (10) calendar”.
4.16.b (6)	Deleted, and re-numbered (7) to (6)
5.2.b (1)	Added, “The licensee must comply with the terms in the admission agreement. Any changes to the agreement must be in writing.”
5.2.c (7)	Deleted, “, who must provide at least the following case management services: assisting residents in gaining access to needed medical, social and other services, coordination of activities required in the resident’s plan of care, coordination of available community services, and discharge planning”
5.2.f	Modified the first sentence to read as follows: “In general, any change of rate or services must be preceded by a ninety (90) day written notice to the resident and the resident’s legal representative, if any.” Added a second sentence to read, “Annual Medicaid room and board rate changes may be implemented after a thirty (30) day written notice to residents and their legal representatives.”
5.3.a (2) vi.	Amended the final sentence to read, “The manager must take into consideration the resident’s wishes, the resident representative’s input, when appropriate, and the proximity of the proposed facility to the current home.”
5.9.c (4)	Revised to read as follows: “Provide instruction and oversight to all direct care personnel regarding each resident’s health care needs and nutritional needs. Delegate nursing tasks as appropriate, following the Board of Nursing’s recommended practices, with adequate documentation of delegation;”
5.9.c (8)	Deleted, “nursing”.
5.11.c	Added, “or arrange for the provision of,”. Also added, “The manager may give credit towards the required 12 hours of training upon hire, for any formal training received in the twelve months preceding the

	date of hire, provided the home maintains documentation of the training and ensures competency in the subject matter.”
5.14.e	Deleted, “unless used in an emergency to prevent serious injury to a resident or others.”
12.1.a	Added, “Enhanced Residential Care providers must provide the services agreed to in the Enhanced Residential Care provider agreement with the state of Vermont and outlined in their Admissions Agreements with ERC residents.”
12.2	Deleted, and re-numbered the remaining subsections accordingly.

II. Stakeholder Comments and DAIL’s Responses

Notwithstanding our best efforts, DAIL and the stakeholders listed above were unsuccessful in reaching an agreement on some of the outstanding issues. The stakeholders’ concerns, and DAIL’s response to each, are as follows:

<b>Stakeholder Comments &amp; DAIL’s Responses</b>
--

5.3.b (4)	<p>..., the enforcement mechanism for overturning a home's refusal to re-admit a resident remains unclear. The regulations should explicitly state that the resident has a right to return after a successful appeal of an emergency discharge or transfer and clarify who can require the home to re-admit the resident in these circumstances. We recommend that the regulations state explicitly that the Department has this authority, and that the HSB has authority to order compliance with the right to return.</p>	<p>If a facility fails to comply with the requirements of this section, these <i>Rules</i> already prescribe enforcement mechanisms. The licensing agency’s enforcement authority, however, is limited to what is set forth in § 4.16 of these <i>Rules</i>, which mirrors that which is contained in 33 V.S.A. § 7111.</p> <p>While the licensing agency may, among other actions, impose administrative penalties, or suspend, revoke, modify, or refuse to renew a license, it does not have the authority to order a facility to re-admit a resident. Instead, both Vermont law and these <i>Rules</i> authorize the licensing agency, the resident, and/or the Attorney General’s Office to bring an action to require a home to re-admit a resident, but this injunctive</p>
-----------	--	--

		relief may only be granted by the court.
5.6.b (6)	<p>VHCA recommends moving away from the 8 hours measure for initial training. As with the staff training upon hire listed above, we anticipate that facilities will need to broaden their portfolio of training options / modalities to comply with the requirements in a way that does not create a challenge for hiring. There are many well-regarded dementia care training programs, including programs designed for different care settings and levels of interaction, and they have varying lengths. The recommendation is to focus on content (already described in 5.6.b(6)v) and not specific hours.</p> <p>We note that, when added together, this creates 20 hours of training before a care giver can work in a facility with a special unit? Can the dementia care training component of the 12 hours for direct care givers count towards these required 8 hours? The concerns about accommodating past experience, recent training, and role of the care giver (outlined in the previous section) apply here as well.</p> <p>With the change to applying these training requirements to “all staff that regularly interact with residents in the facility and/or programs”, VHCA would like clarification on what is meant by “prior to working independently with residents”. What is the dividing line for “working independently” for staff who are not direct care givers?</p>	<p>Training and education of staff is always included in Special Care Unit proposals. The licensing agency does not approve proposals that fail to include training upon hire or ongoing training, so the Rule is merely codifying existing practice. The change in wording to include those who “regularly interact” came from a recommendation of the Governor’s Commission on Alzheimer’s Disease and Related Disorders. The Department believes that requiring an additional 8 hours of specialized training is not unreasonable, regardless of one’s training or prior experience at other facilities.</p> <p>“Independently working with residents” means being assigned to resident care without the supervision of a preceptor.</p>
5.7.a	The State chose not to clarify interpretation of how a RN would perform admission review and whether it is a new, in-person assessment performed directly by the RN vs. a review of assessment materials.	This subsection requires the home (not necessarily the RN) to evaluate a resident prior to admission, and it will be up to the home to develop a process and determine if that means an in-person or virtual/paper review. If it were required to be done by a specific professional or were

		required to be in person, the <i>Rules</i> would reflect that requirement.
5.7.b	VHCA’s recommendation is to replace “registered nurse” with "health care professionals with the appropriate licensure level or expertise”. The reason here is not to allow lower licensure individuals to do the assessment, but instead to allow discretion for assessment to include specialists / higher licensure levels. For example, if a facility has both SNF and RCH beds and are following SNF practices where the assessment may be coordinated by an RN but include assessment by other professionals.	The Department declines to make this change. This language was added to make clear that while assessments in Level IV RCHs, where nursing overview is not provided, may be completed by the Manager, assessments in Level III RCHs or in ALRs, for residents receiving nursing overview, medication administration, or nursing care, must be completed by an RN. This is a scope of practice issue, and assessment is the most important tool in developing the care plan and guiding care.
5.9.c	VHCA proposes that this subsection be amended as follows:  “For each resident requiring nursing overview, administration of medication, or nursing care, <del>the registered nurse</del> <u>nursing staff [must], within their respective professional standards and scope of practice:</u> ”  “Adjusts so that the facility licensing regulations identify the activities that a facility is expected to perform (list in 5.9.c) but refers elsewhere to the scope of practice.”	The Department declines to make this change. As per the Board of Nursing, LPNs are often practicing beyond their scope of practice, so the Department believes this language is needed.
5.9.d	VHCA states, “We were unclear on the intent of this bullet point. Presumably the Manager is ultimately responsible for facility compliance with relevant regulations, including but not limited to nursing services? In which case VHCA would recommend striking for redundancy and clarity. Or, is the intent to set a more-strict rule regarding medication administration than what is recommended	The Department declines to make this change. This requirement is in no way “more strict.” These unlicensed staff are practicing under the RN’s license. Once that RN is no longer employed, there is simply no authority to give meds until those staff are “re-delegated.”

	by the Board of Nursing? In which case VHCA would object to that intent and recommend a more involved conversation.”	The Department believes strongly that this is needed, as it is a point of constant confusion. For example, med techs are unlicensed, and, despite being trained, their authority to administer meds is revoked when the professional under whose license they were acting has left the facility.
5.10	VHCA members request an option for staff who have been trained in administering a medication to administer that medication when it is newly prescribed to a resident – for example, antibiotics to treat a urinary tract infection – to remove the potential for delays in treatment. VHCA notes that the BON memo on nursing delegation allows the state to create exceptions in residential facilities for these types of situations, and so we do not believe that the response to comments fully answers this question. We still wish to have an answer for why the state has chosen not to create options for timely administration of low-risk medications?	The licensing agency declines to lower standards of safety in these residential settings due to outcomes of harm and death that have occurred when new medications are not properly delegated before administration by unlicensed personnel. Medications (in existing rules) are already required to be specifically delegated to the specific resident, so new medications were never allowed to be administered without proper delegation in place. What may be low risk in one resident may not be for the person in the next room.
5.11.c	Concerns about inflexibility of “on-hire” direction is not addressed.	The intent of the change is to ensure that staff who work with residents of licensed homes are competent to provide quality care. The 3 additional training components are important for high quality care of a population with a high prevalence of dementia and trauma/mental challenges, and for cultural awareness.
5.11.e	VHCA members are also unsure on how to implement the new background check requirements, if the staff related requirements are different from new	The new rules codify existing memos that are currently enforced, and the majority of staff employed by homes are

	requirements already implemented by OPR, and how they are meant to implement the background check requirements including for personal staff brought in by residents	unlicensed and not overseen by OPR. The facility’s background checks must be comprehensive, regardless of other checks that are required of individuals in their other professional capacity.
7.1.a (7)	The concern about this guidance is how far down the road of specialized diet a facility is expected to go. When you look at the protocols for texture modification at 8 different levels combined with nutrition protocols for different recognized therapeutic diets (I think there's 6-8 common structures plus modifications for spice level, vegetarian/vegan, and allergies . . .something like that), which then produce hundreds of combinations when they start to get layered on top of each other.	Facilities must determine the specialized diets they can safely provide to their residents. The kind of specialized diets a residence chooses to provide should be based on staff training, the availability of qualified staff, and the facility’s licensure. It would be expected that a level IV residential care home may offer less complex availability of specialized diets than a level III home with ERC.
7.1.a (10)	This provision states, “The home must provide or obtain appropriate education and training for its chief food service staff to ensure the proper preparation and storage of all food items. The training provided to such staff must be documented by the home.”  Could this have a 'for example' type clarification? Other components of the food service rules refer back to USDA and other sources, which helps with understanding the intent. Members are wondering whether this is ServSafe type training (which would make sense) or something different?	The Department declines to make these changes. Examples of training programs that meet this requirement could experience curriculum changes over time. Examples could age poorly and lead to confusion.
12.3	This section reads, in part, as follows:  “(4) The registered nurse must be available onsite at least one (1) hour per week per nursing home level of care resident.  (5) There must be sufficient direct care staff onsite to ensure at least two (2) hours per day of assistance with personal care, per nursing home level of care resident.”	The Department declines to strike these requirements, as requested. (4) is the ERC requirement; (5) is the minimum required in our Nursing Home Rules and is also an existing ERC requirement. Nursing home level of care residents in these homes are entitled to a

	<p>Comment: If facilities are conducting assessments and care planning to match the individual needs of residents, as outlined elsewhere in the regulations, then that should be establishing the appropriate staff levels. This isn't precisely a scope of practice issue, but it's a guiding documents issue – and if the individual assessment and planning isn't the guiding document then the question would be what the source of these numbers is?</p>	<p>nursing home level of personal care.</p>
<p>13.4.e</p>	<p><b>Involuntary Discharge of Residents</b>  ... We note, however, that these regulations lack any clear requirements for ALRs to provide involuntary discharge notices to the resident, or any appeal process to the Commissioner and/or the HSB. An involuntary discharge notice is mentioned in Section 9.4 if a Negotiated Risk process fails, but nothing in these proposed rules prescribe the content of such a notice (such as using larger font, appeal rights, the tenancy termination date, etc.). Section 6.5 specifically exempts ALRs from the involuntary discharge and notice procedures listed in Section 5.3.a of the proposed RCH regulations. We strongly disagree with this exemption.</p> <p>The federal HCBS Settings Rule requires that any admission agreement or lease between a resident and the home must provide equal protection as a tenant would have under state law. Adequate notice of termination of a tenancy is a firmly established right under Vermont law. Under these proposed regulations, the home may require a lease, but it is not mandatory (unlike an admission agreement). If there is no appeal process to DAIL for a discharge/eviction from ALRs, and no requirement that the ALR even notify DAIL of their intent to discharge a resident, then the Department should require a judicially enforceable model lease for all ALRs, to be</p>	<p>As noted in the Department's initial response to this comment, these provisions, formerly contained in Section 6.5, are now in Section 13.4.e. More importantly, these Rules do contain notice requirements, an appeal process, which includes the right to a fair hearing before the Human Services Board, <u>and</u> a requirement that the manager of the home notify the director of the licensing agency immediately upon receipt of an appeal. These requirements are contained in Section 5.3.a (2) and (3), and they apply to both RCHs and ALRs.</p> <p>Having addressed these issues in the Rule, the Department declines to require a judicially enforceable model lease for all ALRs.</p>



	<p>incorporated into the admission agreement per Section 6.2.</p>	
<p>General-Scope of Practice</p>	<p>VHCA is concerned about the practice of facility licensing regulations including elements that define nursing scope of practice, professional standards, or provide interpretation of professional guidelines. We agree with DLP’s concern about providing education / guidance to ensure that the relevant professional standards are being met and nurses are not acting outside their scope of practice – we do not believe that these regulations are the appropriate vehicle for offering that guidance. In general, we note that inclusion of text that is informational / for educational purposes creates a rule set that is cumbersome and more liable to have internal inconsistencies. Related to the particular example of nursing guidance, our primary concerns are:</p> <ul style="list-style-type: none"> <li>• It creates confusion by establishing conflicting authorities – we would prefer education / sub-regulatory guidance that is offered in partnership with the Board of Nursing (and relevant nursing educational bodies).</li> </ul>	<p>The response, which was provided by Shiela Boni, Executive Director of the Board of Nursing (BON), in part, via Teams, on August 9, 2024, and, in part, via email, dated August 13, 2024, is summarized as follows:  The scope of practice for nurses is defined in the Board of Nursing (BON) Administrative Rules. The proposed RCH/ALR rules do not “in any way” conflict with the Administrative Rules that define nursing scope of practice. More specifically, Ms. Boni concluded that, although the Board did not have ample time to fully process the Rule changes to take a formal position, the BON “seemed to understand OPR’s position that DAIL [is] within its authority to determine licensure and credentialing requirements for certain duties and this [does] not present a conflict regarding Board of Nursing authority or the Board Admin Rules related to scope of practice or delegation.”  The BON no longer offers position statements, nor does it offer operational interpretation of the Administrative Rules defining nursing scope of practice. Defining licensure needed to perform certain tasks in the residential care home or assisted living environment does not conflict</p>

	<ul style="list-style-type: none"> <li>• It creates logistical problems in maintaining alignment between sources of information on nursing practice. When there is confusion around interpreting DLP regulations meant to clarify nursing rules, who resolves the confusion? DLP or the Board of Nursing?</li> <li>• And does this change the Board of Nursing’s relationship to nurses when they work in an AL/RC facility versus another provider type? Will this affect how nurses view working in an AL/RC setting?</li> <li>• VHCA anticipates that there <i>will</i> be activity around national standards and nursing practice in long-term care residential setting – for example, guidance on expanded use of virtual technologies (and</li> </ul>	<p>with or re-interpret the BON Administrative Rules for scope of practice.</p> <p>The Vermont BON would clarify any confusion on scope of practice, and the licensing agency (DLP) would clarify any confusion on the Residential Care Home and Assisted Living Residence rules. The BON is the authority on scope of practice for nurses. Nursing scope of practice in Vermont is based on the National Council of State Boards of Nursing (NCSBN). Vermont does not deviate from these standards. If the NCSBN changed standards for nursing practice, the Vermont BON would have to amend its rules to accommodate the change. This would give ample time if any other regulatory changes needed to take place.</p> <p>The setting in which a nurse works does not change their relationship to the Board of Nursing.</p> <p>Nurses working in any care setting must follow the Vermont BON Administrative Rules regardless of expanded use of technology or new</p>
--	---	--

	<p>improvements in those technologies) or changes in approaches to current medications and/or guidance on new medications becoming available (GLP-1 injection, dementia treatment, etc.) - so we do not consider logistical concerns on alignment to be purely theoretical.</p> <ul style="list-style-type: none"> <li>• VHCA recognizes that providers have also raised concerns that the proposed licensing rules do not align with current nursing scope of practice rules – for the purposes of our proposed changes to the rule, we view that input as evidence of our overarching concern about the confusion that results from creating two lines of authority for interpretation. We would not consider removing those clauses from these licensing regulations to mean the matter is resolved, only that it will be resolved in a different way.</li> </ul>	<p>medications becoming available.</p> <p>The Executive Director of the Board of Nursing has stated that, historically, the confusion regarding nursing practice in residential care homes and assisted living residences has involved issues with licensed practical nurses or unlicensed staff persons performing duties they are not qualified to perform by scope of practice rules. DAIL believes the explicit language is necessary to protect residents by defining specific tasks that cannot be performed by staff persons without the proper licensure.</p>

III. Economic Impact Analysis

Through its public comments, submitted in December 2023, the Vermont Health Care Association (VHCA) asserted that the economic impact analysis conducted by DAIL was insufficient and called for a more robust “review for economic impact, feasibility of implementation (including alignment with other related regulations), and a reimbursement plan that would preserve access to services for Medicaid beneficiaries.” Further, at that time, VHCA recommended that DAIL pause consideration of these *Rules* until such work could be completed. While, as more fully set forth below, VHCA has since modified this position and its proposed approach, DAIL is compelled to respond to this argument.

3 V.S.A. § 842(b) provides, in part, that the Committee may object to a final proposed rule ... “if: (6) the economic impact analysis **fails to recognize a substantial economic impact** of the proposed rule, ...” (emphasis added). In conducting its analysis, DAIL identified the changes

below that *could* result in an economic impact to operators of residential care homes and assisted living residences. DAIL noted, however, that some of the requirements set forth in the *Rules* already exist and are merely being codified, and some facilities may experience little to no economic impact in complying with these provisions. To facilitate its assessment, DAIL identified the new regulatory requirements according to the extent of the risk of economic impact to the facilities, categorizing those risks as “zero to negligible”, “low to moderate”, and “moderate/high”, as follows:

A. “Zero to Negligible” Risk (includes existing expectations that are merely codified in rule)

- 4.1 **Licensing Application** - adds application elements (e.g., information for the owner of physical building if different than licensee, attestation of financial stability)
- 5.2 **Uniform Consumer Disclosure** – requires that a form, provided by the licensing agency, be completed and updated as needed.
- 5.5 **General Care** – codifying requirement that residents receive person-centered care in accordance with professional standards of practice and that staff provide adequate supervision to minimize the risk of injury due to accidents.
- 5.6.b **Special Care Units** – adds specific training requirements for dementia (8 hours on hire and 2 hours annually) – This is routinely included in training proposals, so the Rules merely codify this as a requirement
- 5.8.d **Licensed Health Care Provider Services** – removes the ability for unlicensed staff to take telephone orders.
- 5.9.c **Nursing Services** – merely codifies current expectation and the requirement that a registered nurse is responsible for tasks within the RN scope of practice (e.g., complete an assessment, develop a care plan and ensure its implementation, provide instruction to, and oversight of, direct care staff, document training/delegation, review medications and treatments, ensure illness/accidents/changes in condition are treated and documented, ensure doctors are informed about significant changes or accidents, ensure therapeutic diets are provided, monitor health status of residents, ensure infection control standards are followed during nursing care) \*an LPN can be part of the RN’s nursing team
- 5.10.d(5) **Medication Management** - removes the ability of unlicensed staff to “administer” anti-psychotic medications on a PRN basis. \*This merely codifies the inability to delegate nursing judgment. It also ensures PRN psychoactive medications are not administered without first attempting non-pharmacological interventions.
- 5.11.e **Staff Services** - codifies existing and enforced memos regarding background check requirements and hiring of those with criminal records.
- 5.11.h **Staff Services** - codifies existing and enforced staffing requirements when a home chooses to have 6 or more nursing home level of care residents.
- 5.12 **Records/Reports** - add a requirement to report a resident death when it occurs within 2 weeks of a fall, accident, incident; adds new reporting

timeframes for residents who are missing without explanation (changed from 12 hours to 2 hours); adds a requirement to report to the licensing agency any medication errors that result in the need for medical attention.

- 6.18 **Residents' Rights** - requires a large font for resident rights and will require homes to re-print a new Residents' Rights section and grievance procedure for residents and for posting.
- 6.20 **Residents' Rights** - codifies a privacy right by requiring notice when video or audio surveillance is being used.
- 7.1.a(7) **Nutrition and Food Services** - codifies the requirement to provide a therapeutic diet, if ordered by a provider.
- 7.1.a(10) **Nutrition and Food Services** - codifies the requirement to provide basic food safety training for staff who prepare food.
- 7.2.b **Food Safety and Sanitation** - codifies expectation for food storage temperatures to be monitored and recorded.
- 9.1.e **Physical Plant** - might require installation of an outside doorbell at exits, for resident safety if they need to re-enter
- 12.2 (4) **Nursing Home Level of Care (*Staffing*)** - codifies the ERC requirement of 1 hour onsite for the RN for each nursing home level of care (NH LOC) resident.
- 12.3.a **Nursing Home Level of Care (*Quality of Life*)** - codifies the ERC requirement of providing an ongoing program of activities to meet the interests of residents.
- 12.4 **Nursing Home Level of Care (*Activities of Daily Living*)** - codifies the need to provide care and services to meet ADL needs of residents.
- 12.5 **Nursing Home Level of Care (*Bed Rails*)** - codifies the expectation to ensure bedrails are installed correctly and maintained for resident safety.
- 12.8 **Nursing Home Level of Care** - codifies a requirement to report to the licensing agency, on a quarterly basis, information about the home's NHLOC residents.

B. "Low to Moderate" Risk (includes an ongoing low to moderate risk or a one-time moderate/high risk)

- 4.13.d **Responsibility and Authority (*qualifications of manager*)**: for those hired after the effective date of these *Rules*, there are additional experience requirements, as well as the State-approved certification course.
- 5.2.b **Admission Agreement** – will need to develop a bed hold policy and inform residents in the admission agreement.
- 5.3.b **Emergency Discharge or Transfer of Residents** – adds a requirement for notice to be given to resident and adds a requirement for DLP to approve refusals to readmit.
- 5.7.a **Assessment** – adds a pre-admission evaluation requirement.
- 5.10.a **Medication Management** – adds requirements for policies (e.g., policies will need to be developed (codifying expectations) for ensuring psychoactive medications are not being used as chemical restraints, for

reporting and tracking medication errors, for how orders will be obtained and implemented, for ensuring delegation is completed prior to new medications being given to any resident, and for drug storage/safety.

- 5.11.c **Staff Services** – codifies expectation of new employee orientation to include 12 hours of training before staff independently work with residents. Also adds three (3) training elements to the existing seven (7), for a total of 10. Adds training to address: communication and behaviors surrounding dementia; recognition of different cultures, beliefs, gender identities, and sexual orientation; and trauma-informed care.
- 5.13.b **First Aid Equipment and Supplies** - adds a requirement (codifies infection control standard) to have at least a 7-day supply of PPE onsite to meet urgent communicable disease needs.
- 6.19 **Residents’ Rights** - adds a right for residents to establish a resident council that meets in the home – homes will require a system for documenting and responding to concerns of the council.
- 7.1.c **Food Services** - allows for a resident to request a reasonable alternative meal schedule and requires that snacks be available (consistent with the HCBS Settings Rule regarding choice).
- 9.1.f **Environment** - codifies expectation for an infection prevention and control program that aligns with CDC, which may require additional policy writing, if not already in place, and training of staff.
- 9.9.c **Ventilation** - adds a ventilation requirement to ensure rooms do not exceed 81 degrees F – may require the purchase of cooling mechanisms.
- 12.2 (5) **Nursing Home Level of Care (Staffing)** - requires enough staff to provide 2 hours of personal care to each nursing home level of care resident per day.
- 12.6 **Quality Assurance and Performance Improvement** - requires development of a Quality Assurance and Performance Improvement program to identify and address quality issues. 3 person staff minimum must meet at least quarterly and conduct an annual resident satisfaction survey.

C. “Moderate/High” Risk (ongoing)

- 12.2 (1) **Staffing** - codifies the expectation that an on-call nurse is available 24/7 when nursing delegation is in place and no nurse is on site.

As evidenced by the above, despite the inability to calculate the precise economic impact of the above provisions on each of the 105 licensed residential care homes and assisted living residences in Vermont, DAIL did not fail to recognize a substantial economic impact of the proposed rules.

Notwithstanding its previous position, as reflected in its public comments of December 2023, VHCA has recently concluded that “there is a *potential* for upward pressure on rates attributable to the change in facility licensure regulations” (emphasis added). Further, “VHCA recognizes that even if a full economic impact review had shown a negative impact, that fact would not outweigh the public interest in having up-to-date licensing regulations and acceptable safety

standards.” As such, VHCA “fundamentally agree[s] with the need to implement rule changes in a timely fashion.” Finally, “VHCA also recognizes that [the licensing agency] is not the appropriate division to implement economic strategy for health care providers, the primary utility of a full economic impact assessment at this point in the rulemaking process would be for communication with other departments that *do* have that responsibility.”

Recognizing the potential for an economic impact, DAIL has offered to provide to the Department of Vermont Health Access (DVHA) the above list of regulatory changes. While this information may be beneficial to DVHA in assessing the extent to which these licensed facilities may be impacted by the *Rules*, DAIL has no authority to mandate DVHA’s consideration of these changes, the effect on reimbursement rates, if any, should DVHA choose to conduct such an analysis, or the timing of such an analysis. Accordingly, DAIL asserts that it has fully complied with the requirements of 3 V.S.A. § 842(b), and, as such, its chosen effective date of these *Rules* is not contingent upon any action or inaction of DVHA in reviewing the impact of these provisions on reimbursement rates.

**RESIDENTIAL CARE HOME**  
**AND**  
**ASSISTED LIVING RESIDENCE**  
**LICENSING ~~REGULATIONS~~ RULES**

Agency of Human Services  
Department of Disabilities, Aging and Independent Living  
Division of Licensing and Protection  
~~103 South Main Street, Ladd Hall~~ HC 2 South, 280 State Drive  
Waterbury, Vermont 05671-~~2060~~1601

~~October 3~~ April 1, 2025 ~~202400~~

This material is available upon request in alternative formats.



## Table of Contents

<b>Residential Care Home <del>Regulations</del>Rules</b> .....	<b>1</b>
<b>I. General Provisions</b> .....	<b>1</b>
1.1 Introduction .....	1
1.2 Statutory Authority.....	1
1.3 Statement of Intent .....	1
1.4 Exception and Severability.....	1
1.5 Taxes .....	1
1.6 Material Misstatements .....	2
1.7 Appeals.....	2
1.8 License Required.....	2
<b>II. Definitions</b> .....	<b>2</b>
2.1 General Definitions .....	2
2.2 Specific Definitions.....	2
<b>III. Variances</b> .....	<b>9</b>
<b>IV. Licensing Procedures</b> .....	<b>9</b>
4.1. Application .....	9
4.2 Review Process .....	11
4.3 Assistive Community Care Services .....	11
4.4 Denial of Application .....	12
4.5 Re-application .....	13
4.6 Expiration .....	13
4.7 Change in Licensed Capacity.....	13
4.8 Temporary License.....	13
4.9 Change in Status.....	14
4.10 Separate License.....	14
4.11 Transfer Prohibited.....	14
4.12 License Certificate.....	14
4.13 Responsibility and Authority .....	14
4.14 Survey/Investigation.....	15
4.15 Violations: Notice Procedure .....	16
4.16 Enforcement .....	17
4.17 Identification of Unlicensed Homes.....	19
<b>V. Resident Care and Home Services</b> .....	<b>19</b>
5.1 Eligibility.....	19
5.2 Uniform Consumer Disclosure and Admission Agreements .....	20
5.3 Discharge and Transfer Requirements .....	22
5.4 Refunds.....	25
5.5 General Care.....	26
5.6 Special Care Units .....	26
5.7 Assessment .....	27
5.8 Licensed Health Care Provider Services.....	28
5.9 Nursing Services .....	28
5.10 Medication Management.....	30
5.11 Staff Services.....	34

5.12	Records/Reports .....	36
5.13	First Aid Equipment and Supplies .....	38
5.14	Restraints and Seclusion.....	39
5.15	Policies and Procedures.....	39
5.16	Transportation .....	40
5.17	Access by Ombudsman, Protection and Advocacy System.....	41
<b>VI.</b>	<b>Residents' Rights.....</b>	<b>41</b>
<b>VII.</b>	<b>Nutrition and Food Services .....</b>	<b>43</b>
7.1	Food Services .....	43
7.2	Food Safety and Sanitation .....	45
7.3	Food Storage and Equipment .....	46
<b>VIII.</b>	<b>Laundry Services .....</b>	<b>46</b>
<b>IX.</b>	<b>Physical Plant .....</b>	<b>47</b>
9.1	Environment.....	47
9.2	Residents' Rooms.....	47
9.3	Toilet, Bathing and Lavatory Facilities.....	48
9.4	Recreation and Dining Rooms .....	48
9.5	Home Requirements for Persons with Disabilities .....	49
9.6	Plumbing .....	49
9.7	Water Supply.....	49
9.8	Heating .....	49
9.9	Ventilation.....	49
9.10	Life Safety/Building Construction .....	50
9.11	Disaster and Emergency Preparedness.....	50
<b>X.</b>	<b>Pets .....</b>	<b>50</b>
<b>XI.</b>	<b>Resident Funds and Property .....</b>	<b>51</b>
<b>XII.</b>	<b>Nursing Home Level of Care .....</b>	<b>52</b>
<b>XIII.</b>	<b>Assisted Living Residence.....</b>	<b>54</b>
13.1	General Provisions .....	54
13.2	Exceptions .....	54
13.3	Licenses.....	55
13.4	Resident Care and Services .....	55
13.5	Policies and Procedures.....	58
13.6	Agreements and Charges.....	58
13.7	Negotiated Risk .....	59
13.8	Nutrition and Food Services.....	60
13.9	Physical Plant.....	60
<b>Appendix A – Scope and Severity Grid .....</b>		<b>63</b>

## **TABLE OF CONTENTS**

<b>I.</b>	<b>General.....</b>	<b>1</b>
1.1	Introduction.....	1
1.2	Statutory Authority.....	1
1.3	Statement of Intent.....	1

1.4	Exception and Severability .....	1
1.5	Taxes.....	1
1.6	Material Misstatements.....	1
1.7	Appeals .....	1
<b>H.</b>	<b>Definitions.....</b>	<b>2</b>
2.1	General Definitions.....	2
2.2	Specific Definitions.....	2
<b>III.</b>	<b>Variances .....</b>	<b>5</b>
<b>IV.</b>	<b>Licensing Procedures.....</b>	<b>6</b>
4.1	Application.....	6
4.2	Review Process.....	6
4.3	Assistive Community Care Services.....	7
4.4	Denial of Application.....	8
4.5	Re-application.....	8
4.6	Expiration.....	8
4.7	Change in Licensed Capacity.....	8
4.8	Temporary License .....	9
4.9	Change in Status .....	9
4.10	Separate License .....	9
4.11	Transfer Prohibited .....	9
4.12	License Certificate.....	9
4.13	Responsibility and Authority.....	9
4.14	Survey/Investigation .....	10
4.15	Violations: Notice.....	11
4.16	Enforcement.....	12
4.17	Identification of Unlicensed .....	13
<b>V.</b>	<b>Resident Care and Home Services.....</b>	<b>14</b>
5.1	Eligibility .....	14
5.2	Admission .....	14
5.3	Discharge and Transfer Requirements.....	15
5.4	Refunds .....	17
5.5	General Care .....	18
5.6	Special Care Units.....	18
5.7	Assessment.....	19
5.8	Physician Services .....	19
5.9	Level of Care and Nursing Services .....	19
5.10	Medication Management .....	21
5.11	Staff Services .....	24
5.12	Records/Reports.....	25
5.13	First Aid Equipment and Supplies.....	26
5.14	Restraints.....	26
5.15	Policies and Procedures .....	27

5.16 Transportation.....	27
5.17 Death of a Resident.....	27
5.18 Reporting of Abuse, Neglect or Exploitation.....	27
5.19 Access by Ombudsman, Protection and Advocacy System.....	28
<b>VI. Residents' Rights.....</b>	<b>28</b>
<b>VII. Nutrition and Food Services.....</b>	<b>30</b>
7.1 Food Services.....	30
7.2 Food Safety and Sanitation.....	33
7.3 Food Storage and Equipment.....	32
<b>VIII. Laundry Services.....</b>	<b>33</b>
<b>IX. Physical Plant.....</b>	<b>33</b>
9.1 Environment.....	33
9.2 Residents' Rooms.....	33
9.3 Toilet, Bathing and Lavatory Facilities.....	34
9.4 Recreation and Dining Rooms.....	34
9.5 Home Requirements for Persons with Physical Disabilities.....	34
9.6 Plumbing.....	34
9.7 Water Supply.....	35
9.8 Heating.....	35
9.9 Ventilation.....	35
9.10 Life Safety/Building Construction.....	35
9.11 Disaster and Emergency Preparedness.....	35
<b>X. Pets.....</b>	<b>36</b>
<b>XI. Resident Funds and Property.....</b>	<b>36</b>

## Residential Care Home RegulationsRules

### **I. General Provisions**

#### **1.1 Introduction**

The State regulates residential care homes and assisted living residences for the dual purposes of protecting the welfare and rights of residents and assuring they receive an appropriate quality of care. In general, Residential care homes provide care to persons unable to live wholly independently but not in need of the level of care and services provided in a nursing home. Toward that end, these regulationsrules are designed to foster personal independence on the part of residents and a home-like environment in the homes. However, through approved variances and Vermont Medicaid waiver programs, many Residential Care Homes now house numerous residents who require nursing home level of care, and these regulationsrules are also designed to ensure additional protections and services for those residents at nursing home level of care who reside in Vermont's residential care homes.

Residential care homes are licensed as either Level IV or Level III. Both levels must provide room and board, assistance with personal care, general supervision and/or medication management. Level III homes also must provide the additional service of nursing overview.

The intention of the Department of Aging and Disabilities, Aging, and Independent Living is to ~~assist~~ ensure residential care home providers ~~to~~ attain and maintain compliance with these regulationsrules.

All notices to, and information for, residents shallmust be worded in a way that residents of the home can understand, be presented in a large enough font for residents to read, and shallmust be visually accessible to all residents, and made available in other languages and formats when needed, based on resident need and/or request.

#### **1.2 Statutory Authority**

Residential care homes and assisted living residences are subject to the provisions of 33 V.S.A. Chapter 71. The Agency of Human Services has designated the Department of Aging and Disabilities, Aging, and Independent Living, Division of Licensing and Protection, as the licensing and regulatory agency for residential care homes and assisted living residences. That statute and the provisions of these regulationsrules guide them in their work.

#### **1.3 Statement of Intent**

Upon the effective date of these regulationsrules, all residential care homes and assisted living residences in Vermont will be required to adhere to the regulationsrules as adopted.

#### **1.4 Exception and Severability**

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

#### **1.5 Taxes**

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

**1.6 *Material Misstatements***

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

**1.7 *Appeals***

A person aggrieved by a decision of the licensing agency may file a request for a Commissioner's hearing, and, if dissatisfied with the Commissioner's decision, may request a fair hearing with the Human Services Board as provided in 3 V.S.A. §3091.

**1.8 *License Required***

The terms residential care home, assisted living, or assisted living residence or words to that effect may not be used by any facility in its title, brochure, admission agreement, or other written or promotional materials unless the facility has a valid license to operate as a residential care home or assisted living residence issued by the Department of Disabilities, Aging and Independent Living.

**II. Definitions**

**2.1 *General Definitions***

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

**2.2 *Specific Definitions***

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

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

“Adequate supervision” means the appropriate level and number of staff required in a particular situation, the competency and training of that staff, and the frequency of the need.

b.—“**Administration of medication**” means the act of giving a resident the resident’s prescribed medication when the resident is incapable of managing ~~his or her~~their medication.

“Admission” means the point in time at which a resident moves into a facility that has agreed to provide services. “Moves into” includes the period immediately preceding when a facility begins providing services, such as personal care, general supervision, medication management, or nursing overview, to the resident.

“Aging in place” means to remain in a residence despite physical or mental decline that might occur with aging or with disability, as described in 6-313.4c.

“Assisted living residence” means a program or facility that combines housing, health, and supportive services to support resident independence and aging in place. At a minimum, assisted living residences shall must offer, within a homelike setting, a private bedroom, private bath, living space, kitchen capacity, and a lockable door. Assisted living shall must promote resident self-direction and active participation in decision-making while emphasizing individuality, privacy, and dignity.

e.—“**Assistance with medication**” means helping a resident, who is capable of self-administration, to use or ingest, store and monitor their medications.

d.—“**Assistive community care services**” means the Medicaid State Plan service that pays for the cost of a bundle of health care services delivered to Medicaid beneficiaries who live in participating Level III residential care homes. The service bundle includes case management, assistance with the performance of activities of daily living, medication assistance, monitoring and administration, 24 hour on-site assistive therapy, restorative nursing, nursing assessment, health monitoring, and routine nursing tasks.

e.—“**Assistive therapy**” means activities, techniques and methods designed to maintain or improve ADLs, cognitive status or behavior.

f.—“~~Capable of self-preservation~~” ~~means able to evacuate the home in the event of an emergency. Resident capability is further described in the National Fire Protection Association Code.~~

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

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

i.—“**Chemical restraint**” means any drug that is used for discipline or convenience and not required to treat medical symptoms.

“Clinician order for life sustaining treatment (COLST)” means a clinician’s order or orders for treatment, such as intubation, mechanical ventilation, transfer to hospital, antibiotics, artificially administered nutrition, or another medical intervention. A COLST may include a DNR order that meets the requirements of 18 V.S.A. §9708.

“Controlled ~~drug~~ substance” means a drug or chemical whose manufacture, possession, or use is regulated by ~~a government~~ Vermont or federal law.

j.—“**Day of service**” means a day when an eligible resident is living in the home and is provided with the resident’s ACCS services. A day of service does not include any day in which a resident is absent from the home for the entire 24 hours of the calendar day and any day on which a resident is discharged or transferred from the home to another care setting (hospital, nursing home, etc.).

k.—“**Delegation of nursing tasks**” means the formal process approved by the Vermont

Board of Nursing which permits professional nurses to assign nursing tasks to other individuals ~~as long as the registered nurse (or license practical nurse under the direction and oversight of the home's registered nurse) provides proper training, supervision oversight, and monitoring, and for which the registered nurse retains responsibility.~~

l.— **"Discharge"** means movement of a resident out of the home without expectation that the resident will return.

"DNR" means do not resuscitate.

"Drug" means (A) articles recognized in the official United States pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (D) articles intended for use as a component of any article specified in clause (A), (B), or (C). As used in this rule, the term "drug" includes "medication."

"Emergency discharge" means an immediate, unexpected discharge from a home that is necessary for the health and safety of the resident, or when a natural disaster or emergency necessitates the evacuation of the residents, the resident presents an immediate threat to themselves or others, or the process is ordered or permitted by a court. ~~as a result of a medical emergency, a serious threat to the resident or others that cannot be addressed, or any other unforeseen event that cannot be addressed in the home.~~

"ERC" means Enhanced Residential Care, a 24-hour package of services provided by an approved Level III Residential Care Home or an Assisted Living Residence.

"Financial incapacity" means the lack of sufficient cash or established credit necessary to operate all aspects of the home, including payment for building costs, utilities, salaries, food and other resident services for a reasonable period of time going forward.

m.— **"Home"** means a licensed residential care home or assisted living residence.

"Immediate Jeopardy" means a situation in which the home's noncompliance with one or more requirements has caused, or is likely to cause serious injury, serious harm, serious impairment, or death to a resident.

"Incapable of self-evacuation" means the inability reliably to move independently to a point of safety in a timely manner.

"Informed consent" means the consent given voluntarily by an individual with capacity, on their own behalf or on behalf of another **if acting** in the role of an agent, guardian, or surrogate in the case of DNR/COLST orders, after being fully informed of the nature, benefits, risks, and consequences of the proposed health care, of alternative health care, and of no health care.

n.— **"Inspection"** means an on-site visit to or survey of the home by staff of the Division of Licensing and Protection or fire safety inspectors from the Department of Labor and Industry to evaluate care and services and determine if the home is in compliance with the ~~regulations~~rules.



o.—"Investigation" means any gathering of facts, in the home or elsewhere, in response to a complaint or to an allegation that the home is not in compliance with regulationsrules in order to determine if a home is in compliance with the regulationsrules.

"Lease" means a written agreement between the assisted living residence and a resident regarding the resident's rental of the resident unit. A lease may be required in addition to an admission agreement.

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

q.—"Level III" means a residential care home licensed and required to provide room, board, personal care, general supervision, medication management and nursing overview as defined by these regulationsrules.

r.—"Level IV" means a residential care home licensed and required to provide room, board, personal care, general supervision and medication management as defined by these regulationsrules.

s.—"License certificate" means a document issued by the licensing agency which signifies that a home is entitled to operate.

t.—"Licensed capacity" is the maximum number of residents which the residential care home or assisted living residence is licensed to have at one time.

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

u.—"Licensed home" is a residential care home or assisted living residence possessing a valid license to operate from the licensing agency.

v.—"Licensee" means an individual, group of individuals, or corporation in whose name the license is issued and upon whom rests the legal responsibility for maintaining compliance with the regulationsrules.

w.—"Licensing agency" means the Department of Aging and Disabilities, Aging, and Independent Living, Division of Licensing and Protection.

x.—"Manager" means the staff person who has been appointed by the home licensee or owner as responsible for the daily management of a home, including supervision of employees and residents.

y.—"Mechanical restraint" means any equipment, material or device that may be applied to a resident or the resident's environment for the purpose of restricting the resident's activity. Mechanical restraints can include, but are not limited to (depending on how they are used and the resident's abilities), full bed rails, gates,

half doors, geri chairs and other reclining chairs, positioning devices/cushions, roll bars, dignity aprons, wrist and ankle restraints, vests and pelvic restraints. The use of mechanical restraint is a treatment procedure that requires nursing overview.

**“Medication error”** means the observed or identified preparation or administration of medications or drugs that is not in accordance with: the prescriber’s order; the manufacturer’s specifications regarding the preparation and administration of the medication or drug; or accepted professional standards and principles that apply to professionals providing services.

z.—**“Medication management”** means a formal process of (1) assisting residents to self-administer their medications or (2) administering medications, under the supervision oversight and delegation by registered nurses, to designated residents by designated staff of the home. It includes procuring and storing medications, assessing the effects of medications, documentation, and collaborating with the residents' personal physicians licensed health care providers.

**“Misappropriation of property”** means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent, or in situations where the resident is not competent to give consent.

**“Negotiated Risk Agreement”** means a formal, mutually-agreed upon, written understanding between a home and the resident, that results after balancing a resident’s choices and capabilities with the possibility that those choices will place the resident at risk of harm. Negotiated risk does not constitute a waiver of liability and shall must not infringe upon the resident’s rights.

~~**“Negotiated risk agreement”** means a formal, mutually-agreed upon, written understanding that results after balancing a resident’s choices and capabilities with the possibility that those choices will place the resident at risk of harm. Negotiated risk does not constitute a waiver of liability.~~

**“Next of kin”** means the resident’s spouse or civil union partner;; an individual in a long-term relationship of indefinite duration, in which the individual has demonstrated an actual commitment to the resident similar to the commitment of a spouse, and in which this individual and the resident consider themselves to be responsible for each other’s well-being;; the resident’s adult children;; the resident’s parents;; and the resident’s adult siblings.

aa.—**“Nurse”** means a licensed practical nurse or registered nurse currently licensed by the Vermont Board of Nursing to practice nursing.

bb.—**“Nursing care”** means the performance of services necessary to care for the sick or injured and which require specialized knowledge, judgment and skill and meets the standards of the nursing regimen or the medical regimen, or both, as defined in 26 V.S.A. §1572(42) and (§3).

~~**“Nursing delegation”** means the formal process approved by the Vermont Board of Nursing which permits professional nurses to assign nursing tasks to other individuals as long as the registered nurse provides proper training, supervision and monitoring, and for which the registered~~

~~nurse retains responsibility.~~

**"Nursing home level of care"** means 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; ~~or, on a 24-hour basis, health-related care and services to individuals who, because of their mental or physical condition, require nursing care and services.~~

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

**"Owner"** means any individual or any person affiliated with a corporation, partnership, or association with ~~ten (10) percent or greater ownership interest in the business or agency licensed as a -home and who:~~

- ~~1. purports to or exercises authority of an owner in the business or agency;~~
- ~~2. applies to operate or operates the business or agency;~~
- ~~3. maintains an office on the premises of the home;~~
- ~~4. has direct access to persons receiving care at the home;~~
- ~~5. provides direct personal supervision of home personnel by being immediately available to provide assistance and direction during the time services are being provided; or~~
- ~~6. enters into a contract to acquire ownership of such a business or agency.~~

**"Person-centered care"** means care provided by a home in a manner in which the resident is viewed by the home as the locus of control and is supported by the home in making their own choices and in having control over their daily life.

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

ee. **"Plan of care"** means a written description of the steps that will be taken to meet the psychiatric, social, nursing and medical needs and goals of a resident; ~~also referre~~ to as "care plan".

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

gg. **"PRN medication"** means medication ordered by the ~~physician-licensed health care provider~~ that is not to be administered routinely but is prescribed to be taken only as needed and as indicated by the resident's condition.

hh. **"Psychoactive drug"** means a drug that is used to alter mood or behavior, including antipsychotic, anti-anxiety, ~~agents and sedatives, as well as~~ antidepressants, ~~stimulant or mood stabilizing drugs. This also includes~~ ~~or~~ anticonvulsants when used for behavior control.

ii. **"Psychosocial care"** means care necessary to address an identified psychiatric, psychological, behavioral or emotional problem, including problems related to adjustment to the ~~residential care-home~~, bereavement and conflict with other residents.

- jj.—"Registered nurse" means an individual licensed as a registered nurse by the Vermont Board of Nursing.
- kk.—"Resident" means any individual, unrelated to the operator, who ~~is admitted to~~ enters a home in order to receive room, board, personal care, general supervision, medication management, or nursing overview as defined by these ~~regulations~~rules. For the purposes of these ~~regulations~~rules, "resident" also means the individual legally authorized to act on the resident's behalf when the resident is no longer able to exercise any or all of ~~his or her~~their rights.
- "Resident representative" means either of the following: (A) an individual chosen by the resident to act on ~~his or her~~their behalf in order to support the resident with decision making; accessing the resident's own medical, social, or other personal information; managing financial matters; receiving notifications; or a combination of these; or (B) ~~resident's~~ legal representative.
- ll.—"Residential care home" means a place, however named, excluding a licensed foster home, which provides for profit or otherwise, room, board and personal care to three or more residents unrelated to the licensee.
- mmm.—"Restorative nursing" means services to promote and maintain function as defined in the resident's service plan of care.
- "Serious injury" means bodily injury that causes a substantial risk of death, a substantial loss or impairment of the function of any bodily member or organ, a substantial impairment of health, or substantial disfigurement.
- nn.—"Staff" means any individual other than a resident who is either the licensee or is an agent or employee of the licensee, and who performs any service or carries out any duties at or for the home which are subject to these ~~regulations~~rules.
- "Structured environment" means a situation in which a home arranges medical appointments, procures medications, shops, provides transportation or other similar activities on behalf of a resident.
- oo.—"Supervision" (of residents) means providing a structured environment and staffing to ensure the resident's needs for food, shelter, medical care, socialization and safety are met. Supervision also refers to an intervention and means of mitigating the risk of an accident involving a resident. If the home, or staff of the home, provide or are responsible for providing such structure, then the home is providing supervision. Examples of such structure include, but are not limited to, arranging medical appointments, procuring medications, shopping, assigning rooms, providing transportation.
- pp.—"Therapeutic diet" means a ~~physician ordered~~ diet ordered by a licensed health care provider to manage problematic health conditions. Examples include: calorie specific, low-salt, low-fat, no added sugar, ~~supplements~~supplemental nutrition, and altered consistency.
- qq.—"Transfer" means the movement of a resident to another bed within the home or to another health care setting with return to the home anticipated.
- "Trauma-Informed Care" is an approach to delivering care that involves understanding, recognizing and responding to the effects of all types of trauma; Recognizing the widespread impact and signs and symptoms of trauma in residents; and avoiding re-

traumatization.

¶.—"Unlicensed home" means a place, however named, which meets the definition of a residential care home and which does not possess a license to operate.

ss.—"Unrelated to the operator" means anyone other than the licensee's spouse (including an individual who has entered into a civil union), mother, father, grandparent, child, grandchild, uncle, aunt, nephew, niece, or sibling, or mother, father, sister, brother-in-law or domestic partner) or any of the listed relationships acquired through legal marriage.

tt.—"Variance" means a written determination from the licensing agency, based upon the written request of a licensee, which temporarily and, in limited, defined circumstances, waives compliance with a specific regulation.

uu.—"Violation" means a condition or practice in the home which is out of compliance with the regulationsrules.

### III. Variances

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

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

3.1.b The licensee will otherwise meet the goal of the statutory provision or rule; and

3.1.c A variance will not result in less protection of the health, safety and welfare of the residents.

3.2 A variance ~~shall~~will not be granted from a statute or regulation pertaining to residents' rights.

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

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

3.5 A request for a variance from section 5.1.a to retain or admit a resident whose needs exceed that for which the home is licensed to provide must include, with each request, all of the following:

3.5.a A current resident assessment on the level of care (LOC) variance request form, available on the DLP website, that describes the resident's level of care needs, with a description of the resident's care needs and sets forth in detail how the home will meet those needs;<sub>2</sub>

3.5.b A written statement from the resident or the resident's legal representative stating attesting to the resident's fully informed choice to remain in the home; and stating that they have the resident or the resident's legal representative has been informed the resident will have to leave if the variance is denied or terminated;<sub>2</sub>

3.5.c A written statement from the resident's physician-licensed health care provider giving the resident's prognosis and recommending retention at or admission to the home.

### IV. Licensing Procedures

#### 4.1. Application

4.1.a Any person or entity desiring to operate or establish a Residential Care Home or

Assisted Living Residence shall must submit two copies of plans and specifications for review, prior to beginning construction or operation, to a licensing application to the licensing agency.

Department of Disabilities, Aging and Independent Living

Division of Licensing and Protection

103 South Main Street, Ladd Hall HC 2 South, 280 State Drive

Waterbury, Vermont 05671-23062060

In addition, such person or entity shall must:

4.1.b Provide written evidence to the licensing agency of compliance with local zoning codes, or a statement signed by the city, town or village clerk that such a code has not been adopted in the community.

~~4.1.c Submit a license application to the licensing agency.~~

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

4.1.e Provide the licensing agency with at least three references from unrelated persons able to attest to the applicant's abilities to run a residential care home prospective licensee's professional experience with residential care, assisted living, or health care management, and attesting to the applicant's prospective licensee's character.

4.1.e Provide the licensing agency with the name(s) of the owner(s) of the home, if different from the prospective licensee.

4.1.f Provide the licensing agency with contact information for the prospective licensee and the owner(s) of the proposed home and for the owner(s) of the building that will be used as the home, as well as an organizational chart, name of the owners' agent, if any, and other relevant information about the parent company.

4.1.g Provide the licensing agency with a statement attesting to the financial stability of the proposed owner(s) of the home.

4.1.h Provide the licensing agency with a written statement attesting that the owner of the physical plant in which the home will be located agrees to maintain the physical plant in a safe and habitable condition and in compliance with all applicable health and safety codes.

4.1.i Any independent living community residence that wishes to have a "floating" licensed bed program, which applies to individual residents and not fixed rooms, shall must obtain a residential care home license from the licensing agency prior to establishing and operating any floating licensed beds. Approval will be based on a demonstration by the home that:

A. The home will maintain a roster of residents in the floating license beds that clearly document dates of participation for each resident;

B. Staff is separate from any independent living staff, staff of the licensed beds are kept continuously aware of who is currently receiving services, and staffing plans are in place to address needs of residents that are in various areas and/or levels of a building;

C. Admission agreements clearly identify the nature of the floating license and must be issued and signed each time a resident receives RCH services. The agreement ~~shall~~ must contain wording that allows the resident to stay in their room or unit upon discharge from RCH services.

D. The home is in compliance with Division of Fire Safety requirements for all resident rooms in the area of participation.

E. The home has detailed policies and procedures about how the program will be implemented and run, which ~~shall~~ must include admission and discharge criteria.

#### **4.2 Review Process**

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

~~4.2.a Licensing and Protection requires the applicant to submit blueprints for new construction or floor plans to the licensing agency for review by an architect and engineer.~~

~~4.2.ba Labor and Industry requires~~ Provide documentation attesting that all building plans to ~~behave been~~ submitted to ~~Labor and Industry~~ and approved by the Department of Public Safety's Division of Fire Safety for compliance with the fire safety code and accessibility.

~~4.2.be The home ~~shall~~ must submit evidence of compliance with all Department of Environmental Conservation requires applications to be reviewed with regard~~ requirements related to water and sewage systems.

~~If the applicant requests, the Department of Aging and Disabilities shall attempt to convene a meeting of the relevant agencies with the applicant to discuss the review and facilitate a timely completion of the review process.~~

#### **4.3 Assistive Community Care Services**

4.3.a To participate as an Assistive Community Care Services (ACCS) Medicaid provider, a home must be:

- (1) Licensed as a Level III home;
- (2) Maintained in compliance with the Residential Care Home or Assisted Living Residence Licensing ~~Regulations~~ Rules; and
- (3) Enrolled as a Medicaid provider.

4.3.b A home must submit a letter requesting ACCS status to the licensing agency that includes:

- (1) A brief statement of interest in the program;
- (2) A date when the home proposes to begin participation in the program; and
- (3) Whether any residents eligible for the program currently reside in the home.
- (4) A proposed amended resident agreement reflecting program participation terms consistent with these ~~regulations~~ rules;
- (5) Proposed amended policies and procedures reflecting participation in the ACCS program.

- (6) A statement certifying that all of the services required in the ACCS definition found at 2.2.d of the regulationsrules are available and will be provided to meet the assessed needs of each resident.
- 4.3.c The licensing agency will review the request and issue a response in writing within fourteen days. The response will include the licensing agency's decision, the reasons for the decision, and if the decision is to approve the effective date.
- 4.3.d Upon receiving approval to enroll in the program, the home must give a 30 day notice of related rate and resident agreement changes to all affected residents of the home and enter into the standard agreement with the State as a Medicaid provider in the program.
- 4.3.e A home ~~shall~~must give 90 days' advance notice to the licensing agency and to its residents of a decision to withdraw from the ACCS program in the time and manner required for closure of a home pursuant to 5.3(h) of these regulationsrules.
- 4.3.f The licensing agency ~~shall~~will investigate and take action regarding any omissions, failures, and complaints associated with a home's performance in the ACCS program pursuant to relevant regulatory requirements.

#### **4.4 Denial of Application**

- 4.4.a An applicant may be denied a license for anyone of the following:
  - (1) Conviction of a crime, in Vermont or elsewhere, for conduct which demonstrates unfitness to operate a home;
  - (2) Substantiated complaint of abuse, neglect or exploitation;
  - (3) Conviction, in Vermont or elsewhere, for an offense related to bodily injury, theft or misuse of funds or property;
  - (4) Conduct, in Vermont or elsewhere, inimical to the public health, ~~morals,~~ welfare and safety;
  - (5) Financial incapacity, including capitalization, to provide adequate care and services;  
~~or~~
  - (6) An act or omission which would constitute a violation of any of these regulationsrules or would strongly suggest that the applicant will be unlikely to comply with these regulationsrules; ~~or~~
  - (7) The proposed facility does not meet the definition or intent of the type of licensure requested.
- 4.4.b When an applicant is denied for any of the aforementioned reasons, the licensing agency may determine the applicant has overcome the prohibition if presented with evidence of expungement or suitability sufficient to ensure the safety of residents.
- 4.4.c Failure to provide complete, truthful and accurate information within the required time during the application or re-application process ~~shall~~will be grounds for automatic denial or revocation of a license.
- ~~4.4.d Failure to provide sufficient information to demonstrate to the licensing agency's satisfaction the current and ongoing financial stability of the proposed owner(s) shall be grounds for denial or revocation of a license, or denial of a re-application.~~



#### **4.5 Re-application**

- 4.5.a ~~Application forms will be mailed to the applicant approximately sixty (60) days before the end of the licensing year. The~~ completed application form, including all required information in full, must be returned to the licensing agency not less than forty-five (45) days before the expiration date. Upon receipt of a properly completed application, a license will be renewed assuming all other conditions for licensure are met.
- 4.5.b Licenses ~~shall~~will be issued for a period of one (1) year, unless the licensing agency determines that a home's lack of compliance with these ~~regulations~~rules indicates the home should be given a license for a shorter period of time.
- 4.5.c Requests for continued participation in the ACCS Medicaid program must be submitted on an annual basis with the license re-application.

#### **4.6 Expiration**

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

#### **4.7 Change in Licensed Capacity**

- 4.7.a A home ~~shall~~must not provide care to more residents than the capacity for which it is licensed. Requests for a change in licensed capacity ~~shall~~must be made in writing to the licensing agency. A proper staffing pattern to cover an increase in capacity ~~shall~~must be submitted when requested.
- 4.7.b A home may provide other related services, such as acting as a senior meals program meal site or adult day care, provided the home:
  - (1) Has adequate space, staff, and equipment to appropriately provide the service;
  - (2) Has fully informed residents on admission, or upon addition of a new service, about the additional services;
  - (3) Ensures residents of the home will not be inconvenienced by the service; and
  - (4) Has received approval from the licensing agency in advance.
- 4.7.c The offered service must ~~meets~~ accepted standards of practice and general requirements for that service. For adult day care, the provider must meet the standards for adult day care adopted by the Department of Aging and Disabilities, Aging, and Independent Living. For meal sites, the provider must meet the standards adopted for the senior meals program through the Department of Aging and Disabilities, Aging, and Independent Living.
- 4.7.d If a ~~residential care~~ home becomes a meal site, the home cannot charge a resident of the home for a meal at the meal site unless that meal is in addition to the meal the home is required to provide to the resident.

#### **4.8 Temporary License**

A temporary license may be issued permitting operation for such period or periods, and

subject to such express conditions, as the licensing agency deems proper. Such license may be issued for a period not to exceed one year, ~~and~~ Renewals of any such temporary license shallwill not exceed thirty-six (36) months.

#### **4.9 Change in Status**

4.9.a When a change of ownership, licensee, or location is planned, the licensee or prospective licensee is required to file a new application for license at least ninety (90) days prior to the proposed date of the change.

~~4.9.b The application to change ownership shall~~must state the reason(s) for the change in ownership, disclose any connections the prospective owner has or has had with the previous owner and acknowledge in writing that the prospective owner is accepting responsibility for the debts and obligations of the home that were incurred under the prior ownership.

4.9.eb The new licensee ~~shall~~must provide each resident with a new uniform consumer disclosure and a new written admission agreement that describes all rates and charges as defined set forth in 5.2.a and 5.2.b.

4.9.dc The licensee ~~shall~~must give each resident and the licensing agency a written ninety (90) day notice whenever its services, rates, retention policies or physical plant will change in such a way as to significantly enhance or significantly restrict the potential for residents to remain in the residence, taking into account the specific facility population at the time of change.

#### **4.10 Separate License**

A separate license is required for each home that is owned and operated by the same management and/or owner(s).

#### **4.11 Transfer Prohibited**

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

#### **4.12 License Certificate**

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

#### **4.13 Responsibility and Authority**

4.13.a Each home ~~shall~~must be organized and administered under one authority, which may be an individual, corporation, partnership, association, state, subdivision or agency of the state, or any other entity.

4.13.b ~~Whenever the authority is vested in the governing board of a firm, partnership, corporation,~~

~~company, association or joint stock association~~ Regardless of the type of ownership or control of the home, there ~~shall~~must be appointed a duly authorized qualified manager, however named, who will be in charge of the daily management and business affairs of the home, ~~who shall be~~ fully authorized and empowered to carry out the provisions of these ~~regulations~~rules, and ~~who shall~~must be charged with the responsibility of doing so.

(1) The manager of the home ~~shall~~must be present in the home an average of 32 hours ~~or more~~ per week. The 32 hours ~~shall~~ includes time providing services, such as transporting, or attendance at educational seminars. Vacations and sick time ~~shall~~will be taken into account for the 32-hour requirement.

(2) In the event of extended absences by the manager, an interim manager must be appointed.

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

4.13.d The qualifications for the manager of a home, who is hired on or after the effective date of these rules, ~~are~~shall be, at a minimum:

(1) ~~Completion~~ At least a high school diploma or equivalent AND completion of a State approved certification course ~~or~~ AND

(2) One of the following:

- i. At least an ~~A~~associates ~~D~~degree in the area of human services ~~and~~ AND two (2) years of administrative experience in adult residential care; or
- ii. ~~Three~~ Four (34) years of general experience in residential care, including ~~one~~ two (2) years in management, supervisory or administrative capacity; or
- iii. A current Vermont license as a nurse or nursing home administrator; or
- iv. Other professional qualifications and experience related to the provision of healthcare services or management of healthcare facilities including, but not limited to, a licensed or certified social worker. For this qualification, approval of the specific qualifications by the licensing agency is required.

4.13.e At any time after the licensing agency issues a notice of intent to imposed sanctions, Tthe owner(s) and the licensee ~~shall~~must be readily available to the licensing agency and the manager of the home upon request and ~~shall~~must respond to requests for communication and/or information within ~~five~~ ten (510) ~~business~~ calendar days. This could include financial information, operating agreements, or information about care and services.

#### 4.14 *Survey/Investigation*

4.14.a The licensing agency ~~shall~~will inspect a home ~~prior to issuing a license~~ annually and may inspect a home any other time it considers an inspection necessary to determine if a home is in compliance with these ~~regulations~~rules.

(1) Authorized staff of the licensing agency ~~shall~~must have access to the home at all

times, with or without notice.

- (2) The living quarters of the manager of a home may be subject to inspection only where the inspector has reason to believe the licensed capacity of the home has been exceeded and only for the purpose of determining if such a violation exists. The inspector ~~shall~~will permit the manager to accompany ~~him or her~~them on such an inspection.
  - (3) If an authorized inspector is refused access to a home or the living quarters of the manager, the licensing agency may, pursuant to 18 V.S.A. §121, seek a search warrant authorizing the inspection of such premises. Failure to permit access upon request also shall~~will~~ constitute a violation of the ~~regulations~~rules subject to the penalties set forth in section 4.15 below.
  - (4) If, as a result of an investigation or survey, the licensing agency determines that a home is unlicensed and meets the definition of a residential care home, written notice of the violation ~~shall~~will be prepared pursuant to ~~Title 33 V.S.A., §2008-(b)7110(a)~~ and §4.145 of these ~~regulations~~rules.
- 4.14.b The licensing agency ~~shall~~will investigate whenever it has reason to believe a violation of the law or ~~regulations~~rules has occurred. Investigations may be conducted by the licensing agency or its agents and may be conducted at any place or include any person the licensing agency believes possesses information relevant to its regulatory responsibility and authority.
- 4.14.c After each inspection, survey or investigation, an exit conference will be held with the manager or designee. The exit conference ~~shall~~will include an oral summary of the licensing agency's findings and, if regulatory violations were found, notice that the home must develop and submit an acceptable plan of correction. Residents who wish to participate in the exit conference have the right to do so. Representatives of the Office of the State Long Term Care Ombudsman may also attend the exit conference.
- 4.14.d A written report ~~shall~~will be submitted to the licensee at the conclusion of an investigation. The report ~~shall~~will contain the results of the investigation, any conclusions reached and any final determinations made by the licensing agency.
- 4.14.e The licensing agency may, within the limits of the resources available to it, provide technical assistance to the home to enable it to comply with the law and the ~~regulations~~rules. The licensing agency ~~shall~~will respond ~~in writing~~ to reasonable ~~written~~ requests for clarification of the ~~regulations~~rules.
- 4.14.f The home ~~shall~~must make written reports resulting from inspections readily available to residents and to the public in a place readily accessible to residents where individuals wishing to examine the results do not have to ask to see them. The home ~~shall~~must post a notice of the availability of such written reports. If a copy is requested and the home does not have a copy machine, the home must inform the resident or member of the public that they may request a copy from the licensing agency and provide the address and telephone number of the licensing agency.

#### **4.15 Violations: Notice Procedure**

- 4.15.a If, as a result of survey or investigation, the licensing agency finds a violation of a law or regulation, it ~~shall~~will provide a written notice of violation to the home within ten (10)

business days. The notice ~~shall~~will include the following:

- (1) A description of each condition that constitutes violation;
- (2) Each rule or statutory provision alleged to have been violated;
- ~~(3)~~ (3) The scope and severity of each violation, pursuant to the grid set forth in Appendix A;
- ~~(34)~~ (34) The date by which the home must return a plan of correction for the alleged violations;
- ~~(45)~~ (45) The date by which each violation must be corrected;
- ~~(56)~~ (56) Sanctions the licensing agency may impose for failure to correct the violation or failure to provide proof of correction by the date specified;
- ~~(67)~~ (67) The right to apply for a variance as provided for in Section III of these ~~regulations~~rules;
- ~~(78)~~ (78) The right to an informal review by the licensing agency; and
- ~~(89)~~ (89) The right to appeal the licensing agency determination of violation, with said appeal being made to the Commissioner within fifteen (15) days of the mailing of the notice of violation.

4.15.b The licensing agency ~~shall~~will provide a copy of the survey results and any enforcement action as defined in 4.16 to the Office of the State Long Term Care Ombudsman.

4.15.c If the licensee fails either to return an acceptable plan of corrective action or to correct any violation in accordance with the notice of violation, the licensing agency ~~shall~~will provide written notice to the licensee of its intention to impose specific sanctions, and the right of the licensee to appeal.

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

4.15.e Nothing in these ~~regulations~~rules ~~shall~~precludes the licensing agency from taking immediate enforcement action to eliminate a condition which can reasonably be expected to cause death or serious physical or mental harm to residents or staff.

(1) If the licensing agency takes immediate enforcement action, it ~~shall~~will explain the actions and the reasons for it in the notice of violation.

(2) At the time immediate enforcement action is proposed, the licensee ~~shall~~will be given an opportunity to request an appeal to the Commissioner.

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

#### **4.16 Enforcement**

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

4.16.a Administrative penalties against a home for failure to correct a violation or failure to

comply with a plan of corrective action for such violation as follows:

- (1) —Up to \$5.00 per resident or \$50.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily for the administrative purposes of the licensing agency;
- (2) -Up to \$8.00 per resident or \$80.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily to protect the welfare or atthe rights of residents;
- (3) —Up to \$10.00 per resident or \$100.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily to protect the health or safety of residents.
- (4) —For purposes of imposing administrative penalties under this subsection, a violation ~~shall~~will be deemed to have first occurred as of the date of the notice of violation.

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

- (1) Violation by the licensee of any of the provisions of the law or ~~regulations~~rules;
- (2) Conviction of a crime for conduct which demonstrates that the licensee or the principal owner is unfit to operate a home;
- (3) Conduct inimical to the public health, ~~morals~~, welfare and safety of the people of the State of Vermont in the maintenance and operation of the premises for which a license is issued;
- (4) Financial incapacity of the licensee to provide adequate care and services; ~~or~~
- (5) Failure to comply with a final decision or action of the licensing agency; ~~or~~
- ~~(6) Failure to demonstrate the home's financial stability within ten (10) days of receipt of a written request to do so from the licensing agency; or~~
- (7) Misrepresentation by the home of its licensure status or capacity in its advertising, promotional materials, brochures, or other materials.

4.16.c Appointment of a temporary manager, requiring a directed plan of correction, ~~S~~suspension of admissions to a home, or transfer of residents from a home to an alternative placement, for a violation which may directly impair the health, safety or rights of residents, or for operating without a license. Residents subject to transfer ~~shall~~must have the procedural rights provided in Section 6.14.

4.16.d The licensing agency, the attorney general, or a resident may bring an action for injunctive relief against a home in accordance with the Rules of Civil Procedure to enjoin any act or omission which constitutes a violation of the law or regulation. Notice of such action ~~shall~~will be given to the Office of the State Long Term Care Ombudsman.

4.16.e The licensing agency, the attorney general, or a resident may bring an action in accordance with the Rules of Civil Procedure for appointment of a receiver for a home, if there are grounds to support suspension, revocation, modification or refusal to renew the home's license and alternative placements for the residents are not readily available.

Notice of such action ~~shall~~will be given to the Office of the State Long Term Care Ombudsman.

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

4.16.g The remedies provided for violations of the law or ~~regulations~~rules are cumulative.

4.16.h –If closure of the facility is the outcome of any of the enforcement actions listed above, the licensee shall~~must~~ensure that all residents are discharged or transferred in a safe and orderly manner. Failure to do so may result in additional enforcement action and penalties.

#### **4.17 Identification of Unlicensed Homes**

With regard to residential care homes operating without a license, but required by law to be licensed, the following ~~regulations~~ ~~shall~~must~~will~~ apply:

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

4.17.b Any individual listed in 4.17.a who is licensed or certified by the State of Vermont or who is employed by the state or a municipality and who knows or has reason to believe that a home is operating without the license required under this chapter ~~shall~~must report the home and address of the home to the licensing agency.

4.17.c Violation of the above sections may result in a criminal penalty of up to \$500 and/or a prison sentence of up to six months pursuant to 18 V.S.A. §2013.

4.17.d The licensing agency ~~shall~~will investigate any report filed by an individual listed above.

4.17.e The licensing agency ~~shall~~will investigate any report filed by any person other than one listed in 4.17 a, unless it reasonably believes that the complaint is without merit.

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

#### **5.1 Eligibility**

5.1.a The licensee ~~shall~~must not accept or retain as a resident any individual who meets level of care eligibility for nursing home admission, as described in the Division's Level of Care Criteria Guidelines, or who otherwise has care needs which exceed what the home is able to safely and appropriately provide, without first having met the requirements of Section 12, below, and having obtained a variance from the licensing agency.

5.1.b A person with a serious, acute illness requiring the medical, surgical or nursing care of a general or special hospital ~~shall~~must not be admitted to or retained as a resident in a residential care home.

5.1.c A person under eighteen (18) years of age ~~shall~~must not be admitted to a residential care home except by permission of the licensing agency.

5.1.d –The licensee shall~~must~~ensure that all marketing and advertising materials accurately

reflect the level at which the home is licensed and the care and services available and provided at the home.

## **5.2 Uniform Consumer Disclosure and Admission Agreements**

**5.2.a** —The licensee upon initial licensure ~~shall~~**must** state the services it can and will provide, the public programs or benefits that it accepts or delivers, the policies that affect a resident's ability to remain in the home, and any other relevant information.

**(1)** The uniform consumer disclosure ~~shall~~**must** be completed on a form provided by the licensing agency and ~~shall~~**must** be kept on file by the licensee.

**(2)** The uniform consumer disclosure ~~shall~~**must** include a statement describing the daily, weekly or monthly rate to be charged, a description of the services that are covered in the rate and all other applicable financial issues.

**(3)** The uniform consumer disclosure ~~shall~~**must** include a statement that rates are subject to change, including rate changes due to increased care needs, and describe the situations in which the changes(s) could occur.

**(4)** The uniform consumer disclosure ~~shall~~**must** be provided:

i. to residents prior to or at admission and at any time it is changed or is requested by the resident; and

ii. to the public upon request.

**(5)** The availability of a uniform consumer disclosure ~~shall~~**must** be noted prominently in all marketing brochures and written materials.

**5.2.ab** Prior to or at the time of admission, each resident, and the resident's legal representative if any, ~~shall~~**must** be provided with a written admission agreement which describes ~~the daily, weekly, or monthly rate or rates~~ to be charged, a description of the services that are covered in ~~the each~~ rate, and all other applicable financial issues.;

~~(1) including an explanation of the home's policy regarding discharge or transfer when a resident's financial status changes from privately paying to paying with SSI or ACCS benefits. This~~The admission agreement ~~shall~~**must** specify at least how the following services will be provided, and what additional charges there will be, if any, for such services: all personal care services; nursing services; medication management; laundry; transportation; toiletries; and any additional services provided under ACCS or a Medicaid Waiver program. ~~The licensee must comply with the terms in the admission agreement. Any changes to the agreement must be in writing.~~

~~(2)~~ If applicable, the agreement must specify the amount and purpose of any deposit.

~~(3) This~~The agreement must ~~also~~ specify the resident's transfer and discharge rights, including provisions for refunds, and must include a description of the home's personal needs allowance policy.

~~(4)~~ The agreement ~~shall~~**must** include an explanation of the home's policy regarding discharge when a resident's financial status changes from privately paying to paying with public benefits.

~~(5)~~ The agreement ~~shall~~**must** describe the home's policy regarding holding a resident's bed when a resident is away from the home for medical or other reasons.

**5.2.c(1)** ————In addition to general resident agreement requirements, agreements for all ACCS participants ~~shall~~**must** include:

**(1)** ~~†~~The ACCS services, the specific room and board rate, the amount of personal needs



allowance and the provider's agreement to accept room and board and Medicaid as sole payment.

- (2) No home may require that a resident purchase optional services as a condition of serving the resident in the ACCS program. Medicaid ~~regulations~~rules prohibit homes from requiring deposits for ACCS covered services.
- (3) The admission agreement ~~shall~~must inform the resident whether the home will accept SSI or ACCS payments and allow a privately-paying resident to continue residing in the home when the resident is no longer able to continue privately paying the home's periodic rate. Alternatively, the admission agreement ~~shall~~must inform the resident that the home is not required to accept SSI or ACCS payments, that the home reserves the right to make this decision on a case-by-case basis, and that the resident may be transferred or discharged from the home in the event that the resident's financial status changes and the resident is no longer able to continue privately paying the home's periodic rate.
- (4) If the home agrees to accept SSI or ACCS payments and allows the resident to remain in the home when the resident's financial status changes, the home must provide the resident with a new admission agreement as provided to all ACCS participants.
- (5) If a resident loses SSI or ACCS benefits and the loss of such benefits will result in discharge from the home, the home ~~shall~~must provide a thirty (30) day notice prior to discharge or transfer as required in 5.3.a.
- (6) If an ACCS resident resides in a home under a variance, the home may accept one of the following amounts in addition to the resident's required payment and the ACCS daily rate:
  - i. A payment from a Medicaid Waiver program, if applicable; or
  - ii. A payment from another source. In such cases, the amount accepted ~~shall~~must be clearly stated in the resident agreement, and the home ~~shall~~must state whether the resident ~~shall~~will be eligible to remain in the home at the ACCS rate alone if the resident no longer meets the applicable guideline for a higher level of care.

(7) A home certified to provide assistive community care services (ACCS) shall must designate a staff person responsible for case management, who shall must provide at least the following case management services: maintenance and implementation of a current assessment and assisting residents in gaining access to needed medical, social and other services, coordination of activities required in the resident's plan of care, coordination of available community services, and discharge planning. Residents shall must be informed upon admission, and any time there is a change, of the name of the staff person responsible for case management.

5.2.d —A home that has specialized programs or care units such as dementia care shall must include a written statement of philosophy and mission and a description of how the home can meet the specialized needs of residents in its uniform consumer disclosure form and in its admission agreement.

5.2.be. On admission, the home must also determine if the resident has any form of advance directive or DNR/COLST and explain the resident's right under state law to formulate, or not to formulate, an advance directive or DNR/COLST.

5.2.f- ~~In general, A~~any change of rate or services ~~shall~~must be preceded by a ~~thirtyninety (390)~~ day written notice to the resident and the resident's legal representative, if any. Annual Medicaid room and board rate changes may be implemented after a thirty (30) day written notice to residents and their legal representatives. When a home plans to increase a resident's rate due to the resident's increased care needs, at the time the notice is given the home must offer the resident and the resident's representatives a care plan meeting to discuss the proposed increase, the increased care the home will provide to the resident, and the reasons the home believes the increased care is needed.

5.2.ge The home must provide each resident with information regarding how to contact the Office of the Long Term Care Ombudsman, Vermont Protection and Advocacy, In-Disability Rights Vermont, or ~~and~~ the Vermont Senior Citizen's Legal Aid's Elder Law Project.

5.2.dh On admission each resident ~~shall~~must be accompanied by a physician's statement from a licensed health care provider, which shall~~must~~ include: medical diagnosis, including psychiatric diagnosis if applicable, and any additional history that is pertinent to the care of the resident.

### 5.3 *Discharge and Transfer Requirements*

#### 5.3.a Involuntary Discharge or Transfer of Residents

(1) An involuntary discharge of a resident is the removal of the resident from a ~~residential care~~ home when the resident or the resident's legal representative has not requested or consented in advance to the removal. A transfer is the removal of the resident from the room the resident currently occupies to another room in the home or to another facility with an anticipated return to the home. An involuntary discharge or transfer may occur only when:

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

(2) In the case of an involuntary discharge or transfer, the manager ~~shall~~must:

- i. Notify the resident, and if known, a ~~family member and/or~~ legal representative of the resident, of the discharge or transfer and the specific reasons for the move in writing and in a language and manner the resident understands at least 72 hours before a transfer within the home and thirty (30) days before discharge from the home. If the resident ~~does not have a family member or legal representative and~~ requests assistance, the notice ~~shall~~must be sent to the Office of the Long Term Care Ombudsman and Disability Rights Vermont, Vermont Protection and Advocacy or Vermont Senior Citizens Law Project. With the consent of the resident, a family member also may be notified of the pending discharge or

transfer.

- ii. ~~Use the form prescribed by the licensing agency for giving written notice of discharge or transfer and include a statement in large print~~ any legible font, size 18, that the resident has the right to appeal the home's decision to transfer or discharge with the appropriate information regarding how to do so.
  - iii. Include a statement in the written notice that the resident may remain in the room, unit or home during the appeal.
  - iv. Include the name, address and telephone number of the Office of the State Long Term Care Ombudsman.
  - iv. Place a copy of the notice in the resident's clinical record.
  - vi. Ensure that the facility or location to which the resident will be discharged or transferred is appropriate to meet the assessed needs of the resident. To determine whether the new facility or location is appropriate, the manager must consider the assessed needs of the resident and the ability of the proposed facility to meet those needs. The manager must take into consideration the resident's wishes, the resident representative's input, when appropriate, and the proximity of the proposed facility to the current home.
- (3) A resident has the right to appeal the decision by the home to discharge or transfer. The process for appeal is as follows:
- i. To appeal the decision to transfer or discharge, the resident or a resident representative must notify the ~~administrator~~ manager of the home or the director of the licensing agency. Upon receipt of an appeal, the ~~administrator~~ manager shall immediately notify the director of the licensing agency.
  - ii. The request to appeal the decision may be oral or written and must be made within 10 business days of the receipt of the notice by the resident.
  - iii. Both the home and the resident shall provide all the materials deemed relevant to the decision to transfer or discharge to the director of the licensing agency as soon as the notice of appeal is filed. The resident may submit orally if unable to submit in writing. Copies of all materials submitted to the licensing agency will be available to the resident upon request.
  - iv. The director of the licensing agency will render a decision in writing within ~~eight~~ 10 business days of receipt of the notice of appeal.
  - v. The notice of decision from the director will be sent to the resident and to the home, will state that the decision may be appealed to ~~the Human Services Board~~ the Commissioner, and will include information on how to do so.
  - vi. The resident or the home will have 10 business days after the receipt of the Commissioner's decision to file a request for an appeal with the Human Services Board by writing to the Board. The Human Services Board will conduct a de novo evidentiary hearing in accordance with 3 V.S.A. §3091.

### 5.3.b Emergency Discharge or Transfer of Residents

- (1) An emergency discharge or transfer may be made with less than thirty (30) days notice under the following circumstances shall may only occur when one of the below criteria is met:
- i. The resident's attending physician-licensed health care provider documents in the resident's record that the discharge or transfer is an emergency measure necessary for the health and safety of the resident or other residents; or
  - ii. A natural disaster or emergency necessitates the evacuation of residents from the home; or
  - iii. The resident presents an immediate threat to the health or safety of self or others. In that case, the licensee shall must request permission from the licensing agency to discharge or transfer the resident immediately. Permission from the licensing agency is not necessary when the immediate threat requires intervention of the police, mental health crisis personnel, or emergency medical services personnel who render the professional judgment that discharge or transfer must occur immediately. In such cases, the licensing agency shall must be notified on the next business day; or
  - iv. When ordered or permitted by a court.
- (2) An emergency discharge shall may occur only in extreme circumstances, as it eliminates the residents' right to remain in their home during discharge planning and any appeals. An emergency discharge may only be made with less than thirty (30) days' notice under one of the following circumstances:
- i. The resident's attending licensed health care provider documents in the resident's record that the discharge is an emergency measure necessary for the health and safety of the resident or other residents; or
  - ii. A natural disaster or emergency necessitates the evacuation of residents from the home and prevents timely return; or
  - iii. The resident presents an immediate threat to the health or safety of self or others. In that case, the licensee shall must request permission from the licensing agency to discharge the resident.
  - iv. When ordered or permitted by a court.
- (3) The home shall must issue a written notice of emergency discharge to the resident as soon as a determination has been made. The notice shall must include the notice requirements set forth in 5.3.a (2), above, with the exception of 5.3.a.(2) iii.
- (4) If a resident is transferred to a hospital for treatment, that transfer shall will not constitute an emergency discharge. In order to refuse to re-admit a resident after transfer to a hospital (which then becomes a discharge if not allowed to return to their home), the home shall must meet all of the requirements for an emergency discharge set forth above and shall must obtain approval from the licensing agency to refuse re-admission. If this occurs on a non-business day or during non-business hours, the approval request can be made on the next business day.

5.3.c Use of a negotiated risk agreement is not prohibited or required when considering the need for an involuntary discharge of a resident. If used, the negotiated risk agreement

and process must comply with Assisted Living Residence regulationsrules, section 7 XXX13.7.

- 5.3.ed If the resident agrees to a discharge or transfer, the discharge or transfer may occur prior to the effective date of notice.
- 5.3.de A home must provide sufficient preparation and orientation to residents to ensure a safe and orderly transfer or discharge from the home.
- 5.3.ef A home may not initiate an involuntary discharge of a resident whose care is provided and paid for under the ACCS program because of voluntary temporary, leaves from the home.
- 5.3.fg A home is responsible for any charges associated with disconnecting, relocating or reconnecting telephones, cable television, air-conditioning or other similar costs resulting from a home's decision to transfer the resident or relocate the resident's room.
- 5.3.gh A licensee who intends to discontinue all or part of the operation, or to change the admission or retention policy, ownership, or location of the home in such a way as to necessitate the discharge or transfer of residents, ~~shall~~must notify the licensing agency, the Office of the State Long Term Care Ombudsman, and residents at least ninety (90) days prior to the proposed date of change. The licensee is responsible for ensuring that all residents are discharged or transferred in a safe and orderly manner. When such change in status does not necessitate the discharge or transfer of residents, the licensee ~~shall~~must give the licensing agency and residents at least thirty (30) days prior written notice.
- 5.3.hi The home may include language in its admission agreement requiring residents to provide thirty (30) days' notice when the resident intends to voluntarily leave the home. The death of a resident shallwill not be considered voluntarily leaving the home and shallwill not require prior notice.

#### 5.4 ***Refunds***

- 5.4.a When a resident is discharged, the resident ~~shall~~must receive a refund, within ~~15~~thirty (30) days of discharge, for any funds paid in advance for each day care was not provided. In the case of a discharge to a hospital or other temporary placement, the effective date for this provision ~~shall~~will be the day the home is notified the resident will not be returning. For the purposes of providing refunds, "day of discharge" ~~shall~~will be considered the day the resident's room is empty of the resident's belongings, if those belongings are too large or difficult for the home to store temporarily. The facility ~~shall~~must temporarily store small items such as clothing and other personal items if necessary.
- 5.4.b The home ~~shall~~must document in the resident's record the date of receiving notification that the resident would not return, and from whom notice was received.
- 5.4.c A home may not seek to recover for lost income from ACCS residents for care on days that are not days of service. A home may not require, induce or accept payment for care for residents in the ACCS program for days of residence that are not days of service.
- 5.4.d In the case of ACCS residents and homes, the refund ~~shall~~must be based on any funds paid in advance by the resident for care and services. A home ~~shall~~must not offset all or any part of the refund by charging the resident for covered or optional services for any

day that does not meet the definition of a day of service.

## 5.5 *General Care*

- 5.5.a Upon a resident's admission to a ~~residential care~~ home, necessary services ~~shall~~must be provided or arranged to meet the resident's personal, psychosocial, nursing and medical care needs. ~~Quality of care is a fundamental principle that applies to all treatment and care provided to a home's residents.~~ Based on the comprehensive assessment of the resident, the home must ensure that each resident receives treatment and care in accordance with professional standards of practice, the resident's comprehensive, person-centered care plan, and the resident's choices.
- 5.5.b Staff ~~shall~~must provide care that respects each resident's dignity and each resident's accomplishments and abilities. Residents ~~shall~~must be encouraged to participate in their own care plan development and activities of daily living. Families ~~shall~~must be encouraged to participate in care and care planning according to their ability and interest, provided that the home first has obtained and with the permission of the resident.
- 5.5.c Each resident's medication, treatment, and dietary services ~~shall~~must be consistent with the physician's licensed health care provider's orders, the written plan of care, and the resident's preferences.
- 5.5.d A home shall~~must~~ provide each resident with adequate supervision and ~~shall~~must facilitate obtaining assistive devices sufficient to prevent accidents, and/or to mitigate risk of injury due to accidents. ~~A home certified to provide assistive community care services (ACCS) shall designate a staff person responsible for case management, who shall provide at least the following case management services: maintenance and implementation of a current assessment and plan of care, and coordination of available community services.~~

## 5.6 *Special Care Units*

- 5.6.a The home must obtain approval from the licensing agency prior to establishing and operating a special care unit. Approval will be based on a demonstration by the home that the unit will provide specialized services to a specific population.
- 5.6.b A request for approval must include all of the following:
- (1) A statement outlining the philosophy, purpose and scope of services to be provided;
  - (2) A definition of the categories of residents to be served;
  - (3) A description of the organizational structure of the unit consistent with the unit's philosophy, purpose and scope of services;
  - (4) A description and identification of the physical environment, including any secured areas or special provisions for safety;
  - (5) The criteria for admission, continued stay and discharge from the unit; and
  - (6) A specific description of unit staffing, ~~to which~~ shall~~must~~ include:
    - i. Staff qualifications;
    - ii. Staffing levels or ratios for each shift;
    - iii. Orientation content and duration;

~~iii~~iv. In-service education and specialized training; and

v. For dementia or memory care-type units, all staff that regularly interact with residents in the facility and/or programs, must receive specialized training that includes, at a minimum: understanding dementia; communication strategies; person-centered care; addressing challenging behaviors; meaningful activities and social engagement for residents; and the role of the environment.

(A) Such training ~~shall~~**must** consist of a minimum of eight (8) hours, total, prior to staff independently working with residents; and

(B) There ~~shall~~**must** be no fewer than two (2) hours of dementia-specific training per year;

~~iv. Medical management and credentialing as necessary.~~

5.6.c A home that has received approval to operate a special care unit must comply with the specifications contained in the request for approval. ~~The home will be surveyed to determine if the special care unit is providing~~Failure of the home to provide the services, staffing, training and physical environment that ~~was~~**is** outlined in the request for approval ~~shall~~**will** be the basis for the imposition of sanctions up to and including closure of the unit.

5.6.d The requirements of sections 5.2 and 5.3 above ~~shall~~**apply** to all residential care home residents, including those in special care units.

5.6.e A home ~~shall~~**must** not state that it operates a special care unit verbally, or in its title, brochures, uniform consumer disclosure, admission agreement or other written or promotional materials unless the home has obtained and maintains a valid license to operate a special care unit issued by the Department of Disabilities, Aging and Independent Living.

5.6.f A home ~~shall~~**must** make all special care unit proposals and training curricula available for review by residents, legal guardians and family members, and the State Long Term Care Ombudsman's Office. The home ~~shall~~**must** post a notice about the availability of the proposal and the training curricula in a prominent public place within the special care unit(s).

## 5.7 *Assessment*

5.7.a A Level III home ~~shall~~**must** evaluate any prospective resident's functional, cognitive, and mental and physical health status before the resident takes occupancy ~~in~~**of** the home. The purpose of a pre-admission evaluation is to determine whether the prospective resident is eligible for Level III or IV care and whether needed services are available.

5.7.ba An assessment ~~shall~~**must** be completed for each resident within **fourteen (14) days** ~~of~~**after** admission, consistent with the ~~physician's~~ diagnosis and orders ~~from the licensed health care provider~~, using an assessment instrument provided by the licensing agency. If the home is licensed as a Level IV and nursing overview is not provided at the residential care home, the assessment form may be completed by the Manager. If the home is licensed as a Level III residential care home or assisted living residence, for residents requiring nursing overview, medication administration or nursing care, the assessment ~~shall~~**must** be completed by a registered nurse. The resident's abilities regarding

medication management ~~shall~~must be assessed within 24 hours after admission, and nursing delegation must be implemented, if necessary.

~~5.7.b If a resident requires nursing overview or nursing care, the resident shall be assessed by a licensed nurse within fourteen days of admission to the home or the commencement of nursing services, using an assessment instrument provided by the licensing agency.~~

5.7.c Each resident ~~shall~~must also be reassessed annually and at any point in which there is a significant change in the resident's physical or mental condition, as defined in the instructional guide with the assessment instrument, available on the DLP website.

## **5.8 ~~Physician-Licensed Health Care Provider Services~~**

5.8.a All residents ~~shall~~must be under the continuing general supervision care of a physician licensed health care provider of their choosing, and ~~shall~~must receive assistance, if needed, in scheduling and arranging transportation to attend medical appointments.

5.8.b A resident has the right to refuse all medical care, ~~for religious reasons or other reasons of conviction, but in~~In such cases, the home must assess its ability to properly care for the resident and document the refusal and the reasons for it in the resident's record.

5.8.c Any refusal of medical care and the reasons for the refusal must be documented in the resident's record. If the resident has an attending ~~physician~~licensed health care provider, the ~~physician-licensed provider~~ ~~shall~~must be notified about the refusal of care.

5.8.d All ~~physicians'~~ orders from a licensed health care provider obtained via telephone ~~shall~~must be ~~counter~~signed (may be electronically signed) by the ~~physician/~~licensed ~~practitioner~~ health care provider within fifteen (15) days of the date the order was given. Unlicensed staff shall may not take telephone orders; all telephone orders shall must be obtained by a licensed nurse.

## **5.9 ~~Level of Care and Nursing Services~~**

5.9.a ~~The home shall must have sufficient nursing staff 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. Residents who require more than nursing overview or medication management shall not be retained in a residential care home unless the provisions of the following subsections (1)-(5) are all met:~~

~~(1) The nursing services required are either:~~

~~i. Provided fewer than three times per week; or~~

~~ii. 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~~

~~iii. Provided by a Medicare-certified Hospice program; and~~

~~(2) The home 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; and~~

~~(3) The home is able to meet the resident's needs without detracting from services to~~



other residents; and

~~(4) The home 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~~

~~(5) Residents receiving such care are fully informed of their options and agree to such care in the residential care home.~~

5.9.b The following services are not permitted in a residential care home except under a variance granted by the licensing agency: intravenous therapy; ventilators ~~or respirators~~; daily catheter irrigation; feeding tubes; care of stage III or IV ~~decubitus pressure ulcers~~; or suctioning; sterile Sterile dressings are permitted without a variance, but only if the service is provided by a registered nurse or a licensed practical nurse.

5.9.c For each resident requiring nursing overview, administration of medication, or nursing care, the registered nurse ~~shall~~must:

(1) Complete an assessment of the resident in accordance with section 5.7;

~~(2) Oversee development of~~Develop a person-centered written plan of care within 14 days of after admission, in accordance with the nursing process and professional standards of practice, -for each resident that is based on abilities and needs as identified in the resident assessment. The resident, and if the resident chooses, resident representatives such as family or close supports, shall~~must~~ be invited and allowed to participate in care planning meetings. A plan of care must describe the care and services necessary to assist the resident to maintain independence and well-being, and must be revised as the resident's abilities and needs change;

~~(3) Ensure the written plan of care is implemented by staff;~~

~~(34) Provide direct instruction and supervision oversight to all direct care personnel regarding each resident's health care needs and nutritional needs. and delegate Delegate nursing tasks as appropriate, following the board of Nursing's recommended practices, with adequate documentation of delegation and ensure documentation of registered nurse training and competency evaluation for each nursing task delegated to each staff member;~~

~~(45) Maintain a current list for review by staff and physician of all residents' medications. The list shall~~must include: resident's name; medications; date medication ordered; dosage and frequency of administration; and likely side effects to monitor;

~~(56) Assure-Ensure~~ that residents' medications are reviewed periodically and that all resident medications have either a supporting medical diagnosis or problem;

~~(67) Maintain a current list of all treatments for each resident that shall~~must include: the name, date treatment ordered, treatment and frequency prescribed and documentation to reflect that treatment was carried out;

~~(78) Assure-Ensure~~ that symptoms or signs of illness or accident are recorded at the time of occurrence, along with action taken and proper documentation of ongoing nursing follow-up;

~~(89) Ensure that the resident's record documents any changes in a resident's condition as~~

well as the nursing actions taken;

- (10) Ensure that the resident, licensed health care provider, and, if applicable, the resident's legal representative, are notified immediately when there is an accident or incident involving the resident that results in injury, a significant change in the resident's condition, or a need to alter treatment significantly.
- (911) Review all therapeutic diets and food allergies with dietary staff as needed to assure nutritional standards are met and are consistent with ~~physician~~ orders of the licensed health care provider and the recommendations of other relevant health professionals, such as the registered dietician and the speech language pathologist;
- (4012) Monitor stability of each resident's weight;
- (13) Ensure that direct care staff follow current professional standards of practice and current infection control standards during provision of services;
- (1114) Implement assistive therapy as necessary to maintain or improve the resident's functional status, with consultation from a licensed professional as needed; and
- (4215) Assume responsibility for staff performance in the administration of or assistance with resident medication in accordance with the home's policies.

5.9.d The Manager must ensure unlicensed staff only perform nursing tasks and medication administration under the delegation of a registered nurse currently employed by the home. Upon a change in the delegating registered nurse, the incoming registered nurse shall must follow professional standards of nursing practice regarding delegation of nursing tasks to unlicensed staff.

5.9.de Residents of Level III or Level IV may receive home health services on a resident-specific basis to provide care the home cannot readily provide, including skilled nursing, speech therapy, physical therapy and occupational therapy on an intermittent basis (less than three times per week) or more intensively for short term (up to seven days a week for no more than ~~60~~thirty (30) days) to the extent agreed upon by the service provider and the resident if all other provisions of these ~~regulations~~rules are met.

- (1) Level III homes may utilize home health agency services to provide nursing overview or medication management provided such services are provided on a contractual basis to the home and the cost for such a service is not charged to Medicare or the resident. Level IV homes may utilize home health agency services to provide nursing overview or medication management on a ~~resident~~resident-specific basis without a special contractual arrangement.
- (2) If a resident requires skilled nursing services from a home health agency because the home cannot provide the services and the services will continue for more than sixty (60) days, the home must request a variance in writing from the licensing agency to retain the resident.
- (3) Home health agencies ~~shall~~may not provide personal care services, such as bathing, for residents in residential care homes except with the permission of the licensing agency. Personal care by home health agencies associated with hospice care is permitted as long as the home meets all other requirements.

## 5.10 Medication Management

- 5.10 Level III homes must provide medication management only under the oversight of a registered nurse. Level IV homes must determine whether the home is capable of and willing to provide assistance with medications and/or administration of medications as provided under these regulationsrules. Residents must be fully informed of the home's policy regarding medication management prior to admission, both in the uniform consumer disclosure and in the admission agreement.
- 5.10.a Each residential care home must have written policies and procedures describing the home's medication management practices. The policies must cover at least the following:
- ~~(1) Level III homes must provide medication management under the supervision of a licensed nurse. Level IV homes must determine whether the home is capable of and willing to provide assistance with medications and/or administration of medications as provided under these regulations. Residents must be fully informed of the home's policy prior to admission.~~
  - (21) Who provides the professional nursing delegation if the home administers medications to residents unable to self-administer and how the process of delegation is to be carried out in the home.
  - (32) Qualifications of the staff who will be managing medications or administering medications and the home's process for nursing ~~supervision oversight~~ of the staff.
  - (43) How medications ~~shall~~will be obtained for residents, including choices of pharmacies.
  - (54) Procedures for documentation of medication administration.
  - (65) Procedures for disposing of outdated or unused medication, including designation of a person or persons with responsibility for disposal.
  - (76) Procedures for monitoring side effects of psychoactive medications.
  - (7) Procedures for assessing and ensuring that residents with a diagnosis of dementia are not chemically restrained by the use of psychoactive medications, when prescribed to affect or alter behavioral symptoms.
  - (8) Procedures for reporting and tracking medication errors.
  - (9) Procedures setting forth how new medication and/or treatment orders will be obtained and implemented in the home.
  - (10) Procedures to ensure that registered nurse delegation has been completed prior to unlicensed staff administering any new medication to any resident.
  - (11) Procedures for obtaining, storing, administering, documenting, counting and disposing of controlled substances.
- 5.10.b The manager of the home is responsible for ensuring that all medications are handled according to the home's policies and that designated staff are fully trained in the policies and procedures.
- 5.10.c Staff ~~will~~ ~~shall~~must not ~~assist with or~~ administer any medication, prescription or over-the-counter medications for which there is not a physician's written, signed order from a licensed health care provider and a supporting diagnosis or problem statement in the resident's record.

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

- (1) A registered nurse ~~shall~~**must** conduct an assessment consistent with the physician's licensed health care provider's diagnosis and orders of the resident's care needs as required in section 5.7.c.
- (2) A registered nurse ~~shall~~**must** delegate the responsibility for the administration of specific medications to designated staff for designated residents. Delegation shall be resident-specific for each medication.
- (3) The registered nurse ~~shall~~**must** accept responsibility for the proper administration of medications, and is responsible for:
  - i. Teaching designated staff proper techniques for medication administration and providing appropriate information about the resident's condition, relevant medications, and potential side effects;
  - ii. Establishing a process for routine communication with designated staff about the resident's condition and the effect of medications, as well as changes in medications;
  - iii. Assessing the resident's condition and the need for any changes in medications; and
  - iv. Monitoring and evaluating the designated staff performance in carrying out the nurse's instructions regarding medication administration and documentation.
  - v. Ensuring that all applicable staff are trained and delegated before the staff are permitted to administer any newly prescribed medication to any resident.
- (4) All medications ~~shall~~**must** be administered by the person who prepared the doses unless the registered nurse responsible for delegation approves in writing of an alternative method of preparation and administration of the medications.
- (5) Staff other than a nurse may administer PRN psychoactive medications only when the home has a written plan for the use of the PRN medication which: describes the specific behaviors the medication is intended to correct or address; identifies any known triggers for the behaviors; specifies the circumstances that indicate the use of the medication; educates the staff about what desired effects or undesired side effects the staff must monitor for; and documents the time of, reason for and specific results of the medication use.
  - i. Unlicensed staff ~~shall~~**must** not administer anti-psychotic medications on a PRN or "as needed" basis, unless the delegating registered nurse gives verbal permission prior to administration for each dose, which ~~shall~~**must** be documented.
  - ii. Prior to PRN psychoactive medications being administered to a resident who is not capable of self-administration, non-pharmacological interventions ~~shall~~**must** be attempted, which ~~shall~~**must** be described in the resident's plan of care. The non-pharmacological interventions attempted prior to the administration of the PRN psychoactive medications ~~shall~~**must** be documented in the resident's record.
- (6) Insulin and other injectable diabetes medications. Staff other than a nurse may administer ~~insulin~~ injections only when:

- i. The ~~diabetic resident's~~ condition and medication regimen of the person with diabetes is considered stable by the registered nurse who is responsible for delegating the administration, which shall must be documented by the current delegating nurse in the medical record; and
  - ii. The designated staff to administer ~~insulin injections~~ to the resident have received additional training in the administration of ~~insulin injections~~, including the use of various injection vehicles (syringes, insulin pens, etc.), and return demonstration, and the registered nurse has deemed them competent and documented that assessment; and
  - iii. The registered nurse monitors the resident's condition regularly and is available when changes in condition or medication might occur.
- 5.10.e Staff responsible for assisting residents with medications, that does not qualify as medication administration, must receive training from a licensed nurse in the following areas before assisting with any medications ~~from the licensed nurse~~:
- (1) The basis for determining "assistance" versus "administration".
  - (2) The resident's right to direct the resident's own care, including the right to refuse medications.
  - (3) Proper techniques for assisting with medications, including hand washing and checking the medication for the right resident, medication, dose, time, route.
  - (4) Monitoring for signs, symptoms and likely side effects of medications; procedure for documenting and notifying appropriate staff about concerns regarding side effects or medication interactions; to be aware of for any medication a resident receives.
  - (5) The home's policies and procedures for assistance with medications.
- 5.10.f Residents who are capable of self-administration have the right to purchase and ~~self-self-~~administer over-the-counter medications. However, the home must make every reasonable effort to be aware of such medications in order to monitor for and educate the residents about possible adverse reactions or interactions with other medications without violating the resident's rights to direct the resident's own care. If a resident's over-the-counter medications use poses a significant threat to the resident's health, staff must notify the ~~physician~~licensed health care provider. The home's registered nurse shall must assess and document a resident's abilities regarding self-administration, for residents self-administering or being assisted with medications, at least annually and upon any significant change(s) in the resident's medications or condition.
- 5.10.g Homes ~~shall~~must establish procedures for documentation sufficient to indicate to the ~~physician~~licensed health care provider, registered nurse, ~~certified~~ manager or representatives of the licensing agency that the medication regimen as ordered is appropriate and effective. At a minimum, this ~~shall~~must include:
- (1) Documentation that medications were administered as ordered;
  - (2) All instances of refusal of medications, including the reason why and the actions taken by the home;
  - (3) All PRN medications administered, including the date, time, reason for giving the medication, and the effect;

- (4) A current list of who is administering medications to residents, including staff to whom a registered nurse has delegated administration; and
  - (5) For residents receiving psychoactive medications, a record of monitoring for side effects.
  - (6) All incidents of medication errors.
- 5.10.h All drugs, medicines and chemicals used in the home shall be labeled in accordance with currently accepted professional standards of practice. Medication shall be used only for the resident identified on the pharmacy label.
- (1) Resident medications that the home manages shall be stored in locked compartments under proper temperature controls. Only authorized personnel shall have access to the keys.
  - (2) Medications requiring refrigeration shall be stored in a refrigerator with a thermometer and maintain a temperature between 36 - 46 degrees Fahrenheit (F). If the home does not have a separate refrigerator for medications, those medications requiring refrigeration shall be stored in a separate, locked container impervious to water and air and a temperature between 36 -40 degrees F shall be maintained, to ensure both food safety and medication storage requirements are met if kept in the same refrigerator used for storage of food.
  - (3) Residents who are capable of self-administration may choose to store their own medications provided that either they or the home is able to provide the resident with a secure storage space to prevent unauthorized access to the resident's medications. Whether or not the home is able to provide such a secured space shall be included in the uniform consumer disclosure and in the admission agreement and shall be explained to the resident on or before admission.
  - (4) Medications left after the death or discharge of a resident, or outdated medications, shall be promptly disposed of in accordance with the home's policy and applicable standards of practice.
  - (5) Narcotics-Opioids and other controlled drugs-substances must be kept in a locked cabinet. Narcotics-Opioids must be accounted for on a daily basis each shift. Other controlled substances drugs shall be accounted for on at least a weekly daily basis.

## 5.11 *Staff Services*

- 5.11.a There shall be a 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.
- 5.11.b The home must ensure that staff demonstrate competency in the skills and techniques they are expected to perform before providing any direct care to residents.
- 5.11.c ~~There~~ The home shall ~~be provide,~~ or arrange for the provision of, at least twelve (12) hours of training upon hire and each year ~~for to~~ each staff person providing direct care to residents. The manager may give credit towards the required 12 hours of training upon hire, for any formal training received in the twelve months preceding the date of hire, provided the home maintains documentation of the training and ensures competency in the subject matter. The training must include, but is not limited to, the following:

- (1) Resident rights;
- (2) Fire safety and emergency evacuation;
- (3) Resident emergency response procedures, such as the Heimlich maneuver, accidents, police or ambulance contact and first aid;
- (4) Policies and procedures regarding mandatory reports of abuse, neglect and exploitation;
- (5) Respectful and effective interaction with residents;
- (6) Infection control measures, including but not limited to, hand washing, handling of linens, maintaining clean environments, blood borne pathogens and universal precautions; ~~and~~
- (7) General supervision and care of residents;:-
- (8) Communication strategies, person-centered care, challenging behaviors and understanding dementia;
- (9) Recognition of and sensitivity to different cultures, belief systems, abilities, gender identities, sexual orientation; and
- (10) Trauma-informed care.

5.11.~~ed~~ All training to meet the requirements of 5.11.~~b-c~~ ~~must~~ ~~shall~~ be documented. Training in direct care skills by a home's licensed nurse may meet this requirement, provided the nurse documents the content and amount of training.

5.11.~~de~~ The licensee ~~shall~~ ~~must~~ not have on staff a person who has had a substantiated charge of abuse, neglect or exploitation ~~substantiated against him or her, as defined in 33 V.S.A. Chapters 49 and 69 involving a child or an adult, nor one a person~~ who has been convicted of an offense for actions related to bodily injury, theft or misuse of funds or property, or other crimes inimical to the public welfare, in any jurisdiction, whether within or outside of the State of Vermont.

- (1) -This ~~provision prohibition applies~~ ~~shall apply~~ to the manager of the home as well, regardless of whether the manager is the licensee or not.
- (2) The licensee ~~shall~~ ~~must~~ take all reasonable steps to comply with this requirement, including, but not limited to, obtaining and checking personal and work references, ~~and~~ contacting the Division of Licensing and Protection, the Department for Children and Families and the Department of Public Safety's Vermont Criminal Information Center (VCIC) or another national background check vendor ~~in accordance with 33 V.S.A. §6911~~ to see if prospective employees are on the Vermont abuse ~~registry registries~~ or have a record of convictions in any state or territory.
- (3) The home ~~must~~ require a resident as a condition of occupancy to conduct abuse registry (both adult and child) and criminal record checks for any privately hired personal care providers not employed by a licensed or certified agency.
- (4) All background checks ~~must~~ be rechecked based on facility policy. The policy ~~must~~ include, at a minimum an annual re-check of Vermont criminal and abuse registries, and an annual re-check of all jurisdictions if a staff member has worked or lived in another state since the initial background check was completed and/or does so on a

regular basis, and at any time any employee or caregiver notifies the home of a conviction or substantiation.

(5) If a prospective or current employee's background check is returned with a criminal offense for actions related to bodily injury, theft or misuse of funds or property, or other crimes inimical to public welfare, the facility must keep on file a written decision to hire that records the reason the facility has determined that the employee's prior criminal offense poses no foreseeable risk of abuse, neglect, or exploitation to residents.

5.11.f ~~e~~ The licensee **must** ensure that no ~~S~~staff persons ~~shall not~~ perform any duties when their judgment or physical ability is impaired to the extent that they cannot perform duties adequately or be held accountable for their duties.

5.11.g ~~g~~ There ~~shall~~**must** 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~~**must** be at least one (1) responsible staff member on duty and awake at all times. The number of staff in all homes must be sufficient to provide for the care and supervision of all residents. There ~~shall~~**must** be a record of the staff on duty, including names, titles, dates and hours on duty.

5.11.h In homes that include six (6) or more nursing home level of care residents, there must be at least two (2) caregivers per shift. In a home with any nursing home level of care residents, at least one caregiver must be awake at all times. Depending on resident needs, the second staff person assigned to the overnight shift is not required to be awake.

5.11.g ~~i~~ The licensing agency may require a home to have specified staffing levels in order to meet the needs of residents.

## **5.12 Records/Reports**

5.12.a The licensee ~~shall be~~**is** responsible for maintaining, filing and submitting all records required by the licensing agency. Such records ~~shall~~**must** be kept current and available for review at any time by authorized representatives of the licensing agency.

5.12.b The home must keep and maintain the following records ~~shall be maintained and kept on file~~:

- (1) A resident register including all discharges, transfers out of and returns to the home and all admissions.
- (2) A record for each resident which includes: resident's name; emergency notification numbers; name, address and telephone number of any legal representative or, if there is none, the next of kin; physician's-licensed health care provider's name, address and telephone number; instructions in case of resident's death; the resident's assessment(s); progress notes regarding any accident or incident and subsequent follow-up; progress notes regarding any illness or change in condition and subsequent related follow-up; list of allergies; a signed admission agreement; a recent photograph of the resident, unless the resident objects; a copy of the resident's advance directives, if any completed; and a copy of the document giving legal authority to another, if any.
- (3) For residents requiring nursing care, including nursing overview or medication



management, the record ~~shall~~must also contain: initial assessment; annual reassessment; significant change assessment; ~~physician's licensed health care provider's~~ admission statement and current orders; staff progress notes including changes in the resident's condition and action taken; and reports of ~~physician-licensed health care provider~~ visits, signed telephone or electronic orders and treatment documentation; and resident plan of care.

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

(5) A written report of any accident, incident, or illness involving a resident shall~~must~~ be placed in the resident's record.

5.12.c A home must file the following reports with the licensing agency:

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

(2) ~~A written report of any accident or illness shall be placed in the resident's record.~~ Any untimely deaths or serious injury as a result of an accident or incident ~~shall~~must be reported to the licensing agency and a record kept on file.

i. In those deaths in which the law applies (such as an unexpected, untimely death), pursuant to 18 V.S.A. §5205 (a), the manager shall ~~be~~ is responsible for immediately notifying the regional medical examiner.

ii. In those deaths in which the medical examiner need not be notified, the manager shall~~must~~:

(A) Follow the instructions of the deceased, legal representative, if any, next of kin, or other relative regarding funeral and other related arrangements.

(B) In instances where the services of an undertaker are not immediately available, and the resident occupied a multi-bed room, the manager shall ~~must~~ arrange for the immediate removal of the body of the deceased resident to a separate unoccupied room.

(C) Remove a deceased resident's body from the home within a reasonable amount of time, given the circumstances, but in any case, within the time required by the local town or municipal ordinance, if any.

iii. When a resident dies unexpectedly or within two (2) weeks of a fall, injury or incident (such as choking, exposure, etc.), the licensee shall ~~must~~ send a report to the licensing agency with the following information:

(A) Name of resident;

(B) Circumstances of the death; and

(C) Circumstances of any recent injuries, falls, or incidents.

(3) ~~A report of any~~Any unexplained absence of a resident from a home for more than ~~12~~ two (2) hours ~~shall~~must be reported to the police, legal representative and family, if any. The incident ~~shall~~must be reported to the licensing agency within ~~twenty-four~~

- ~~(24)~~twelve (12) hours of disappearance followed by a written report within ~~seventy-two (72)~~forty-eight (48) hours, a copy of which ~~shall~~must be maintained.
- (4) ~~A written report of any~~Any breakdown or cessation to the home's physical plant's major services (plumbing, heat, water supply, air conditioning, etc.) or supplied service, which disrupts the normal course of operation. The licensee ~~shall~~must notify the licensing agency immediately whenever such an incident occurs. A copy of the report ~~shall~~must be sent to the licensing agency within seventy-two (72) hours.
- (5) ~~A written report of any~~Any reports, allegations or incidents of abuse, neglect ~~or,~~ exploitation of residents or misappropriation of resident property shallmust be reported to the licensing agency.
- i. The licensee and staff shallmust report any case of suspected abuse, neglect or exploitation of a resident to Adult Protective Services (APS). A separate report shallmust also be made to the licensing agency. APS may be contacted by calling toll-free 1-800-564-1612. The licensing agency may be contacted by calling toll-free 1-888-700-5330. The home ~~shall~~must make the reports to APS and to the licensing agency immediately but not later than within 48 hours of learning of the suspected, reported or alleged incident.
- ii. In addition to filing the reports as described above, a home shallmust conduct its own investigation and ~~shall~~must take immediate steps to prevent further abuse, neglect or exploitation from occurring. The results of the home's investigation ~~shall~~must be reported to the licensing agency within 5 business days from the date of the initial report of the allegation. The home's investigation and determination shallmust not delay reporting of the alleged or suspected incident to Adult Protective Services and to the licensing agency.
- iii. Incidents involving resident-to-resident abuse must be reported to the licensing agency any time a resident alleges, or the licensee or staff observe or suspect, verbal, physical or mental abuse; sexual abuse, if an injury has resulted; or if there is a pattern of abusive behavior.
- (A) All resident-to-resident incidents, even minor ones, must be recorded in the resident's record.
- (B) The home shallmust notify legal representatives and families (if permitted) about the incident(s) and ~~shall~~must document the report and the plan the home developed to address the behaviors.
- (6) A written report of resident injury or death following the use of mechanical or chemical restraint.
- (7) A written report of all medication errors that result in the need for medical attention.
- 5.12.d Reports and records ~~shall~~must be filed and stored in an orderly manner so that they are readily accessible and available for reference within two (2) hours of request.
- 5.12.e Resident records ~~shall~~must be kept on file at least seven (7) years after the date of either the discharge or death of the resident.
- 5.13 First Aid Equipment and Supplies**
- 5.13.a Equipment and such supplies as are necessary for universal precautions, to meet resident

needs and for care of minor cuts, wounds, abrasions, contusions, and similar sudden accidental injuries ~~shall~~must be readily available and in good repair.

5.13.b. Supplies of personal protective equipment needed to care for residents with suspected or confirmed communicable disease ~~must~~ be kept onsite to meet urgent needs. The supply should be sufficient for at least a 7 day period.

#### **5.14 *Restraints and Seclusion***

5.14.a Mechanical restraints may be used only in an emergency to prevent serious injury to a resident or others and ~~shall~~must not be used as an on-going form of treatment. The use of a mechanical restraint ~~shall~~ constitutes nursing care.

5.14.b When a temporary/emergency mechanical restraint is applied by the staff, a ~~physician~~ licensed health care provider must be consulted immediately and written approval for the use and/or continuation of the restraint obtained. The written order, signed by the ~~physician~~ licensed health care provider, ~~should~~must contain the resident's name, date, time of order, and reason for restraint, means of restriction, and period of time the resident is to be restrained. A record ~~shall~~must be kept of every time the restraint is applied and removed during the day and night. Restraints must be removed at least every two (2) hours when in use so as to permit personal care to be given. A resident in a restraint ~~shall~~must be under continuous supervision by the staff of the home.

5.14.c A resident ~~shall~~must not be secluded in any room by locking or fastening a solid door from the outside. Half doors or gates may be employed only with the prior approval of both the ~~physician~~ licensed health care provider and the licensing agency.

5.14.d The home ~~shall~~must notify the licensing agency and the resident representative within 24 hours when any restraint is used, and within 72 hours must complete a reassessment of the resident to determine if the resident's needs can be met within the residential care setting. The reassessment ~~shall~~must include consultation with the ~~physician~~ licensed health care provider and the resident or the resident's representative.

5.14.e Residents ~~shall~~ have a right to be free from chemical restraints and unnecessary mechanical restraints. ~~The use of chemical restraints is not permitted. Any time a mechanical or physical restraint is applied, or a drug is prescribed that could be used as a restraint, the R~~residents, ~~at the time the restraint is applied, shall~~must be notified ~~at the time a restraint is applied~~ of their right to challenge the use of the restraint. A resident has the right to meet with and discuss the challenge with the following individuals:

- (1) The home manager;
- (2) The licensing agency;
- (3) The Commissioner of the licensing agency;

(4) The Office of the Long Term Care Ombudsman.

In the event that a resident does challenge the use of a restraint, the home operator ~~shall~~must inform the licensing agency at the time the challenge is raised.

~~5.14.f A home may not install a door security system which prevents residents from readily exiting the building without prior approval of the licensing agency.~~

#### **5.15 *Policies and Procedures***

Each home must have written policies and procedures that govern all services provided by the home. A copy ~~shall~~**must** be available at the home for review upon request by residents and their representatives, advocacy organizations and the licensing agency.

### **5.16 Transportation**

5.16.a Each home must have a written policy about what transportation is available to residents of the home. The policy must be explained at the time of admission.

5.16.b Transportation for medical services and local community functions ~~shall~~**must** be provided up to twenty (20) miles, round-trip without charge, ~~not to exceed~~**for** four (4) round-trips per month. Residents may be charged, at a reasonable rate, for those miles in excess of twenty (20) miles round-trip and for any or all mileage for transportation not prescribed herein.

### ~~5.17—Death of a Resident~~

~~5.17.a In those deaths in which the law applies (such as an unexpected, untimely death), pursuant to 18 V.S.A. §5205 (a), the manager shall be responsible for immediately notifying the regional medical examiner.~~

~~5.17.b In those deaths in which the medical examiner need not be notified, the manager shall:~~

~~(1) Follow the instructions of the deceased, legal representative, if any, next of kin, or other relative regarding funeral and other related arrangements.~~

~~(2) In instances where the services of an undertaker are not immediately available, and the resident occupied a multi-bed room, the manager shall arrange for the immediate removal of the body of the deceased resident to a separate unoccupied room.~~

~~(3) Remove a deceased resident's body from the home within four (4) hours.~~

~~5.17.c When a resident dies unexpectedly or within 48 hours of a fall or injury, in addition to notifying the medical examiner, the licensee shall send a report to the licensing agency with the following information:~~

~~(1) Name of resident;~~

~~(2) Circumstances of the death;~~

~~(3) Circumstances of any recent injuries or falls; and~~

~~(4) A list of all medications and treatments received by the resident during the two (2) weeks prior to the death.~~

### **5.18—Reporting of Abuse, Neglect or Exploitation**

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

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

~~reporting of the alleged or suspected incident to Adult Protective Services.~~

~~5.18.c Incidents involving resident to resident abuse must be reported to the licensing agency if a resident alleges abuse, sexual abuse, or if an injury requiring physician intervention results, or if there is a pattern of abusive behavior. All resident to resident incidents, even minor ones, must be recorded in the resident's record. Families or legal representatives must be notified and a plan must be developed to deal with the behaviors.~~

### **5.1917 Access by Ombudsman, Protection and Advocacy System**

5.1917.a The home ~~shall~~**must** permit representatives of Adult Protective ~~Services~~, the Office of the Long--Term Care Ombudsman and ~~Vermont Protection and Advocacy, Inc. Disability Rights Vermont~~ to have access to the home and its residents in order to: visit; talk with; and make personal, social and legal services available to all residents; inform residents of their rights and entitlements; assist residents in resolving problems and grievances.

5.1917.b Any designated representative of the Office of the Long--Term Care Ombudsman or ~~Protection and Advocacy, Inc. Disability Rights Vermont~~ ~~shall~~**must** have access to the home at any time in accordance with those programs' state and federal mandates and requirements. Those representatives ~~shall~~**must** also have access to the resident's records with the permission of the resident or as otherwise provided by state or federal law.

5.1917.c Individual residents have the complete right to deny or terminate any visits by persons having access pursuant to this section.

5.1917.d If a resident's room does not permit private consultation to occur, the resident may request, and the home must provide, an appropriate place for such a meeting.

## **VI. Residents' Rights**

6.1 Every resident ~~shall~~**must** be treated with consideration, respect and full recognition of the resident's dignity, individuality, and privacy. Care provided to residents shall must be person-centered. A home may not ask a resident to waive the resident's rights.

6.2 Each home ~~shall~~**must** establish and adhere to a written policy, consistent with these ~~regulations~~**rules**, regarding the rights and responsibilities of residents, which ~~shall~~**must** be explained to residents at the time of admission.

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

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

6.5 Each resident ~~shall~~**must** be allowed to associate, communicate and meet privately with persons of the resident's own choice. Homes ~~shall~~**must** allow visiting hours from at least 8 a.m. to 8 p.m., or longer. Visiting hours ~~shall~~**must** be posted in a public place.

6.6 Each resident may send and receive personal mail unopened.

6.7 Residents have the right to reasonable access to a telephone for private conversations. Residents ~~shall~~**must** have reasonable access to the home's telephone except when

restricted because of excessive unpaid toll charges or misuse. Restrictions as to telephone use ~~shall~~must be in writing. Any resident may, at the resident's own expense, maintain a personal telephone or cell phone in ~~his or her~~their own room, subject to any restrictions imposed by a court.

- 6.8 A resident may complain or voice a grievance without interference, coercion or reprisal. Each home ~~shall~~must establish a written grievance procedure for resolving residents' concerns or complaints that is explained to residents at the time of admission. The grievance procedure ~~shall~~must include at a minimum, time frames, a process for responding to residents in writing, and a method by which each resident filing a complaint will be made aware of the role and contact information of the Office of the Long Term Care Ombudsman and ~~Vermont Protection and Advocacy~~Disability Rights Vermont as an alternative or in addition to the home's grievance mechanism.
- 6.9 Residents may manage their own personal finances. The home or licensee ~~shall~~must not manage a resident's finances unless requested in writing by the resident and then in accordance with the resident's wishes. The home or licensee ~~shall~~must keep a record of all transactions and make the record available, upon request, to the resident or legal representative, and ~~shall~~must provide the resident with an accounting of all transactions at least quarterly. Resident funds must be kept separate from other accounts or funds of the home.
- 6.10 The resident's right to privacy extends to all records and personal information. Personal information about a resident ~~shall~~must not be discussed with anyone not directly involved in the resident's care. Release of any record, excerpts from or information contained in such records ~~shall~~bear subject to the resident's written approval, except as requested by representatives of the licensing agency to carry out its responsibilities or as otherwise provided by law.
- 6.11 The resident has the right to review the resident's medical or financial records upon request.
- 6.12 Residents ~~shall~~must be free from mental, verbal or physical abuse, neglect, and exploitation. Residents ~~shall~~must also be free from restraints and seclusion as described in Section 5.14.
- 6.13 When a resident is adjudicated ~~mentally disabled~~to be a person in need of guardianship, such powers as have been delegated by the Probate or Family Court to the resident's guardian ~~shall~~ devolve to the guardian pursuant to applicable law.
- 6.14 Residents subject to transfer or discharge from the home, under Section 5.3 of these ~~regulations~~rules, ~~shall~~must:
- 6.14.a Be allowed to participate in the decision-making process of the home concerning the selection of an alternative placement;
- 6.14.b Receive adequate notice of a pending transfer or discharge; and
- 6.14.c Be allowed to contest their transfer or discharge by filing a request for a Commissioner's hearing and for a fair hearing before the Human Services Board in accordance with the procedures in 3 V.S.A. §3091.
- 6.15 Residents have the right to refuse care to the extent allowed by law. This includes the

right to discharge ~~himself or herself~~themselves from the home. The home must fully inform the resident of the consequences of refusing care. If the resident makes a fully informed decision to refuse care, the home must respect that decision and is absolved of further responsibility. If the refusal of care will result in a resident's needs increasing beyond what the home is licensed to provide, or will result in the home being in violation of these ~~regulations~~rules, the home may issue the resident a thirty (30) day notice of discharge in accordance with section 5.3.a of these ~~regulations~~rules.

- 6.16 Residents have the right to formulate advance directives, to have in place DNR and clinician-ordered life-sustaining treatment (COLST) documents, as provided by state law, and to have the home follow the residents' wishes.
- 6.17 ACCS residents have the right to be away from the home for voluntary leaves of more than 24 hours, unless a legally appointed guardian directs the home otherwise. ACCS residents have the right to make decisions about such voluntary leaves without influence from the home.
- 6.18 The enumeration of residents' rights ~~shall will~~ not be construed to limit, modify, abridge or reduce in any way any rights that a resident otherwise enjoys as a human being or citizen. A copy of the Residents Rights set forth in this section summary of the obligations of the residential care home to its residents shall must be written in clear language, large print (font size 18), given to residents on admission, and posted conspicuously in a public place in the home. ~~Such notice shall also summarize the~~The home's grievance procedure and directions for contacting the Office of the Long-Term Care Ombudsman Program and Disability Rights Vermont also must be written in the same font size, provided to each resident, and posted in the same location as the statement of Residents' Rights Vermont Protection and Advocacy, Inc.
- 6.19 Residents have a right to establish a residents' council that meets in the home. Resident councils must be afforded the opportunity to be self-directed and to meet privately without staff present. The home must record concerns that are communicated to it as a result of the council and must document the action taken in response.
- 6.20 Residents have a right to be informed by the home, and to have visitors informed, if any video or audio surveillance is underway in any resident areas.

## VII. Nutrition and Food Services

### 7.1 Food Services

#### 7.1.a Menus and Nutritional Standards

- (1) The home shall must provide each resident with a nourishing, palatable, well-balanced diet that meets their daily nutritional and special dietary needs, taking into account the preferences of each resident.
- (2) Menus for regular and therapeutic diets ~~shall must~~ be planned and written at least one (1) week in advance.
- (3) The meals served each day ~~shall must~~ provide 100% ~~of the Recommended Dietary Allowances (RDA) as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and comply with the Dietary Guidelines for Americans. of the current Dietary Reference Intakes for adults age 60 and older as established by the Food and Nutrition Board of the National Academy of~~

Sciences, National Research Council and comply with the Dietary Guidelines for Americans. Reference material for meal planning can be located at: [www.dietaryguidelines.gov](http://www.dietaryguidelines.gov)

- (4) The current week's regular and therapeutic menu **shall** be posted in a public place for residents and other interested parties.
- (5) The home **shall** follow the written, posted menus. If a substitution must be made, the substitution **shall** be recorded on the written menu.
- (6) The home **shall** keep menus, including any substitutions, for the previous month on file and available for examination by the licensing agency.
- (7) There **shall** be a written physician's order from a licensed health care provider in the resident's record for all therapeutic diets, and the home shall ensure that the therapeutic diets are provided, including mechanically-altered diets.
- (8) The home **shall** maintain sufficient food supplies at hand on the premises to meet the requirements of the planned weekly menus.
- (9) No more than 14 hours **shall** elapse between the end of an evening meal and offering the morning meal.
- (10) The home shall provide or obtain appropriate education and training for its chief food service staff to ensure the proper preparation and storage of all food items. The training provided to such staff shall be documented by the home.

#### 7.1.b Meal Patterns Planning Guidelines

- (1) The home shall follow current Dietary Guidelines for Americans in planning and providing resident meals. Fresh fruits and vegetables shall be on the menu daily.
- (2) The home shall consider each resident's dietary needs with respect to health status, age, gender and activity level, particularly with regard to portion sizes and frequency of meals and snacks. In taking these factors into consideration, overall nutrient intake shall not be compromised.

The following guide provides the basis for meal planning and will provide nearly 100% of the RDA for most residents. In cases of a resident's advanced age and very light activity, homes may consider each resident's needs with respect to portion size and frequency of eating but **shall** not compromise overall nutrient intake. In addition to the suggested food servings, particular emphasis must be given to fluid intake for residents.

<i>Suggested Daily</i>		
<i>Food Group</i>	<i>Servings</i>	<i>What Counts as a Serving</i>
Bread, Cereal,	6-11	1 slice bread, tortilla
Rice, Pasta		½ bagel, English muffin ½ hamburger/hot dog roll, pita ½ cup cooked cereal, rice, pasta 1 oz ready-to-eat cereal 3-4 small or 2 large crackers
Fruit	2-4	¾ cup 100% fruit juice 1 medium apple, banana or other fruit ½ cup fresh, cooked or canned fruit



		¼ cup dried fruit
Vegetables	3-5	½ cup cooked or chopped raw vegetables 1 cup leafy, raw vegetables ¾ cup vegetable juice
Milk, Yogurt, Cheese	3 or more	1 cup milk, yogurt 1 ½ oz natural cheese
Meat, Poultry, Legumes, Eggs	2 (total of 4-5 oz/day)	2-3 oz cooked lean meat, poultry or fish ½ cup cooked legumes
Nuts		1 egg 2 tablespoons peanut butter ⅓ cup nuts
Fluids	8 cups (8 fluid oz each)	Water, juice, herbal tea, non-caffeinated coffee, tea

- ~~At least one serving of citrus fruit or other fruit or vegetable rich in vitamin C shall be served each day.~~
- ~~At least one serving of fruit or vegetable rich in vitamin A shall be served at least every other day.~~

#### 7.1.c Meal Service

- (1) Each home ~~shall~~must provide residents with three nutritionally balanced, attractive and satisfying meals in accordance with these ~~regulations~~rules. Meals ~~shall~~must be served at appropriate temperature and at normal meal hours, unless a resident has requested a reasonable alternative meal schedule. Texture modifications will be accommodated as needed.
- (2) Supplemental nourishment (snacks) ~~shall~~must be ~~offered available~~to residents before their hour of retiring and between meals at all times.
- (3) Residents ~~shall~~must be allowed an adequate amount of time to eat each meal at an unhurried pace.
- (4) Residents ~~shall~~must be provided with comparable alternatives of similar nutritional value to the planned meal upon request.

#### 7.2 Food Safety and Sanitation

- 7.2.a Each home ~~shall~~must procure food from sources that comply with all laws relating to food and food labeling. ~~Food must be~~The home shall ensure that all food is safe for human consumption, free of spoilage, filth or other contamination. All milk products served and used in food preparation must be pasteurized. Cans with dents, swelling or leaks shall be rejected and kept separate until returned to the supplier.
- 7.2.b All perishable food and drink ~~shall~~must be labeled, dated and held at proper temperatures:
  - (1) At or below 40 degrees Fahrenheit.
  - (2) At or above 140 degrees Fahrenheit when served or heated prior to service.
  - (3) Staff shall monitor the temperature of temperature-controlled food storage areas.

Staff shall must conduct regular temperature checks of prepared food to ensure proper food safety and shall must document the time and results of each check. The U.S. Department of Agriculture provides guidance for time and temperature curves to ensure prepared foods remain outside of the 'danger zone' for food safety.

- 7.2.c All work surfaces ~~are~~ shall must be cleaned and sanitized after each use. Equipment and utensils ~~are~~ shall must be cleaned and sanitized after each use and stored properly.
- 7.2.d The home shall must ~~as~~ ensure that food handling and storage techniques are consistent with safe food handling practices.
- 7.2.e The use of outdated, unlabeled, or damaged canned goods is prohibited, and such goods shall must not be maintained on the premises.

### **7.3 Food Storage and Equipment**

- 7.3.a All food and drink shall must be stored so as to protect from dust, insects, rodents, overhead leakage, unnecessary handling and all other sources of contamination.
- 7.3.b Areas of the home used for storage of food, drink, equipment or utensils shall must be constructed to be easily cleaned and shall must be kept clean.
- 7.3.c All food service equipment shall must be kept clean and maintained according to manufacturer's guidelines.
- 7.3.d All equipment, utensils and dinnerware shall must be in good repair. Cracked or badly chipped dishes and glassware shall must not be used.
- 7.3.e Single service items, such as paper cups, plates and straws, shall must be used only once. They shall must be purchased and stored in sanitary packages or containers in a clean dry place and handled in a sanitary manner.
- 7.3.f Food service areas shall must not be used to empty bed pans or urinals-or as access to toilet and utility rooms. If soiled linen is transported through food service areas, the linen must be in an impervious container.
- 7.3.g Doors, windows and other openings to the outdoors shall must be screened against insects, as required by seasonal conditions.
- 7.3.h All garbage shall must be collected and stored to prevent the transmission of contagious diseases, creation of a nuisance, or the breeding of insects and rodents, and shall must be disposed of at least weekly. Garbage or trash in the kitchen area must be placed in lined containers with ~~eovers~~ lids.
- 7.3.i Poisonous compounds (such as cleaning products and insecticides) shall must be labeled for easy identification and shall must not be stored in the food storage area unless they are stored in a separate, locked compartment within the food storage area.

## **VIII. Laundry Services**

- 8.1 The home shall must launder bed and bath linens used by the residents. The home shall must launder and return the residents' personal clothing. ~~in order for residents to be clean, well-groomed and comfortable.~~
- 8.1.a The home shall must make provisions for residents who choose to launder their own

personal clothing.

- 8.1.b Clean and soiled laundry ~~shall~~must be separated at all times.
- 8.1.c All soiled laundry ~~will~~ ~~shall~~must be stored and transported in a closed, impervious container.
- 8.1.d Each resident's personal laundry ~~shall~~must be identified by a distinctive marking or other method and ~~shall~~must be returned to the resident after laundering.
- 8.1.e Laundering ~~shall~~must be done so that laundered items are clean and in good condition. Personal items damaged or lost by the home ~~shall~~must be replaced by the home.

## **IX. Physical Plant**

### **9.1 Environment**

- 9.1.a The home ~~shall~~must provide and maintain a safe, functional, sanitary, homelike and comfortable environment. This includes outdoor areas that are used by residents.
- 9.1.b All homes ~~shall~~must comply with all current applicable state and local rules, ~~regulations~~rules, codes and ordinances. Where there is a difference between codes, the code with the higher standard ~~shall~~will apply.
- 9.1.c The home ~~shall~~must ensure that the resident environment remains as free of accident hazards as possible. Maintaining a safe environment ~~shall~~must include the safe storage and clear labeling of chemical agents, which ~~shall~~must include secure storage of such agents if the home has residents with cognitive impairment.
- 9.1.d A home ~~shall~~must not install a door security system that prevents residents from readily exiting the building without prior written approval ~~for the system~~ from the licensing agency.
- 9.1.e A home ~~shall~~must ensure that there is a mechanism, such as a doorbell, for residents to signal staff if they are in need of re-entry into the building during all hours.
- 9.1.f All homes ~~shall~~must establish and maintain an infection prevention and control program, consistent with national and state standards, designed to provide a safe and sanitary environment and to help prevent the development and transmission of communicable diseases and infections.

### **9.2 Residents' Rooms**

- 9.2.a Each bedroom ~~shall~~must have at least 100 square feet of useable floor space in single rooms and at least 80 square feet per bed in double-bed rooms, exclusive of toilets, closets, lockers, wardrobes, alcoves or vestibules. These specifications may be waived for beds licensed prior to the adoption of the 1987 ~~regulations~~rules.
- 9.2.b Rooms ~~shall~~must be of dimensions that allow for the potential of not less than three (3) feet between beds and three feet between the bed and the side wall to facilitate cleaning and easy access.
- 9.2.c Each bedroom ~~shall~~must have an outside window.
  - (1) Windows ~~shall~~must be openable and screened except in construction containing approved mechanical air circulation and ventilation equipment.
  - (2) Window shades, ~~venetian~~ blinds or curtains ~~shall~~must be provided to control natural

light and offer privacy.

- 9.2.d The door opening of each bedroom ~~shall~~must be fitted with a full-size door of solid core construction.
- 9.2.e Resident bedrooms ~~shall~~must be used only as the personal sleeping and living quarters of the residents assigned to them.
- 9.2.f A resident ~~shall~~must not have to pass through another bedroom or bathroom to reach the resident's own bedroom.
- 9.2.g ~~The home shall provide e~~Each resident ~~shall be provided with a the resident's own~~ bed that ~~shall be~~is a standard-size full or twin bed. Roll away beds, cots and folding beds ~~shall~~must not be used for residents.
- 9.2.h Each bed ~~shall~~must be in good repair, with a clean, comfortable mattress that is at least 6 inches thick, and standard in size for the particular bed, a pillow, bedspread, and a minimum of one (1) blanket, two (2) sheets, and one (1) pillowcase.
- 9.2.i Each resident ~~shall~~must be provided adequate closet and drawer space to accommodate clothing and personal needs.

### **9.3 Toilet, Bathing and Lavatory Facilities**

- 9.3.a Toilet, lavatories and bathing areas ~~shall~~must be equipped with grab bars for the safety of the residents. There ~~shall~~must be at least one (1) full bathroom that meets the requirements of the Americans with Disabilities Act of 1990 and state building accessibility requirements as enforced by the Department of ~~Labor and Industry~~Public Safety, Division of Fire Safety.
- 9.3.b There ~~shall~~must be a minimum of one (1) bath unit, toilet and lavatory sink, exclusively available to residents, per eight (8) licensed beds per floor. Licensed beds having private lavatory facilities (bath, toilet and lavatory sink) ~~shall~~ are not included in this ratio.
- 9.3.c Each lavatory sink ~~shall~~must be at least of standard size and ~~shall~~must be equipped with hot and cold running water, soap, and, if used by multiple residents, paper towels.
- 9.3.d Each bathtub and shower ~~shall~~must be constructed and enclosed so as to ensure adequate space and privacy while in use.
- 9.3.e Resident lavatories and toilets ~~shall~~must not be used as utility rooms.

### **9.4 Recreation and Dining Rooms**

- 9.4.a All homes ~~shall~~must provide at least one (1) well-lighted and ventilated living or recreational room and dining room for the use of residents.
- 9.4.b Combination dining and recreational rooms are acceptable but must be large enough to serve a dual function.
- 9.4.c Dining rooms ~~shall~~must be of sufficient size to seat and serve all residents of the home at the same time.
- 9.4.d Smoking shall is not permitted in any area of the home, with the exception of the manager's living quarters if the manager lives onsite. The home may designate an area outside the home as a smoking area, so long as its location does not have a negative

impact on the residents and staff, and noncombustible safety-designed ashtrays or receptacles are provided. Smoking shall be permitted only in designated areas and the home must ensure that residents who object to smoke have "smoke free" dining or recreation space.

### **9.5 Home Requirements for Persons with *Physical* Disabilities**

- 9.5.a Each home ~~shall~~must be accessible to and functional for residents, personnel and members of the public with ~~physical~~ disabilities in compliance with the Americans with Disabilities Act.
- 9.5.b ~~Blind Residents who are blind or physically disabled residents who have a mobility disability shall~~must not be housed above the first floor unless the home is in compliance with all applicable codes, ~~regulations~~rules and laws as required by the Department of ~~Labor and Industry~~Public Safety, Division of Fire Safety.

### **9.6 Plumbing**

- 9.6.a All plumbing ~~shall~~must operate in such a manner as to prevent back-siphonage and cross-connections between potable and non-potable water. All plumbing fixtures and any part of the water distribution or sewage disposal system ~~shall~~must operate properly and be maintained in good repair.
- 9.6.b Plumbing and drainage for the disposal of sewage, infectious discharge, household and institutional wastes ~~shall~~must comply with all State and Federal ~~regulations~~rules.
- 9.6.c All plumbing fixtures ~~shall~~must be clean and free from cracks, breaks and leaks.
- 9.6.d Hot water temperatures ~~shall~~must not exceed 120 degrees Fahrenheit in resident areas.

### **9.7 Water Supply**

- 9.7.a Each home ~~shall~~must be connected to an approved public water supply when available and where said supply is in compliance with the Department of Health's public water system ~~regulations~~rules.
- 9.7.b If a home uses a private water supply, said supply ~~shall~~must conform to the construction, operation and sanitation standards published by the Department of Health. Private water supplies ~~shall~~must be tested annually for contamination, and copies of results ~~shall~~must be kept on premises.
- 9.7.c Water ~~shall~~must be distributed to conveniently located taps and fixtures throughout the building and ~~shall~~must be adequate in temperature, volume and pressure for all purposes, including fire fighting if there is a residential sprinkler system.

### **9.8 Heating**

- 9.8.a Each home ~~shall~~must be equipped with a heating system which is of sufficient size and capability to maintain sufficient heat in all areas of the home used by residents and which complies with applicable fire and safety ~~regulations~~rules.
- 9.8.b The minimum temperature ~~shall~~must be maintained at an ambient temperature of 70 degrees Fahrenheit in all areas of the home utilized by residents and staff during all weather conditions.

### **9.9 Ventilation**

- 9.9.a Homes ~~shall~~must be adequately ventilated to provide fresh air and ~~shall~~must be kept free

from smoke and objectionable odors.

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

9.9.c During the warmer months, adequate cooling shall~~must~~ be provided to ensure that the temperature of resident areas does not exceed 81 degrees Fahrenheit.

#### **9.10 Life Safety/Building Construction**

All homes ~~shall~~must meet all of the applicable fire safety and building requirements of the Department of ~~Labor and Industry~~Public Safety, Division of Fire ~~Prevention~~Safety.

#### **9.11 Disaster and Emergency Preparedness**

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

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

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

9.11.d There ~~shall~~must be an operable telephone on each floor of the home, available to residents at all times. A list of emergency telephone numbers ~~shall~~must be posted by each telephone.

### **X. Pets**

10.1 Pets may visit the home providing the following conditions are met:

10.1.a The pet owner must provide evidence of current vaccinations.

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

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

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

10.2 a The home ~~shall~~must ensure that the presence of a pet causes no discomfort to any resident.

10.2.b The home ~~shall~~must ensure that pet behavior poses no risk to residents, staff or visitors.

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

- 10.2.d Pets must be free from active disease, receive regular veterinarian care and are vaccinated against common communicable diseases, including leukemia, heartworm, hepatitis, leptosporisosis, parvo, worms, fleas, ticks, ear mites, and skin disorders, and must be current at all times with rabies and distemper vaccinations.
- 10.2.e Pet health records shall be maintained by the home and made available to the public.
- 10.2.f The home shall maintain a separate area for feeding cats and dogs other than the kitchen or resident dining areas.

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

- 11.1 A resident's money and other valuables shall be in the control of the resident, except where there is a guardian, or attorney in fact (power of attorney), or representative payee who requests otherwise. The home may manage the resident's finances only upon the written request of the resident. There shall be a written agreement stating the assistance requested, the terms of same, the funds or property and persons involved.
- 11.2 If the home manages the resident's finances, the home must keep a record of all transactions, provide the resident with a quarterly statement, and keep all resident funds separate from the home or licensee's funds.
- 11.3 The personal property of the resident shall be available for the resident's use and securely maintained when not in use.
- 11.4 The resident shall not be solicited in any way for gifts or other consideration by persons connected with the home, in any way.
- 11.5 When it becomes apparent that a resident is no longer capable of managing funds and/or property, the licensee shall contact the resident's legal representative if any, or the next of kin. If there is no legal representative or next of kin, the licensee shall meet with the resident to discuss the resident's ability to manage funds and/or property. The licensee must inform the resident of their right to consult with the State Long Term Care Ombudsman's Office to discuss their options for assistance with managing their funds, contact the licensing agency.
- 11.6 When a resident is absent without explanation for a period of thirty-one (31) days and there is no responsible person, the licensee shall hold the property for six (6) months. At the conclusion of this period, the property shall be transferred to the selectmen selectboard of the town.
- 11.7 Each home shall develop and implement a written policy regarding resident's personal spending needs. The policy shall be explained to the resident upon admission, with a copy provided to the resident at that time.
- 11.7.a The personal needs policy shall include a provision that recipients of Supplemental Security Income (SSI) shall retain from their monthly income an amount adequate to meet their personal needs exclusive of all other rates, fees or charges by the home. The amount shall be sufficient to meet such personal needs as clothing and incidental items, reading matter, small gifts, toiletries, occasional foods not provided by the home and other such items.
- 11.7.b For SSI or Medicaid recipients in homes participating in ACCS, the amount shall be at least as much as the personal needs allowance provided Medicaid recipients in nursing homes as set by federal and state law.

- 11.8 The licensee, the licensee's relative or any staff member ~~shall~~must not be the legal guardian, trustee or legal representative for any resident other than a relative. The licensee or any staff of the home are permitted to act as the resident's representative payee according to Social Security ~~regulations~~rules provided the resident or the resident's legal representative agrees in writing to this arrangement and all other provisions of these ~~regulations~~rules related to money management are met.
- 11.9 No licensee, staff or other employee of the home may solicit, offer or receive a gift, including money or gratuities, from a resident. Nominal gifts, such as candy or flowers that can be enjoyed by all staff, are permissible, but should not be solicited.

## XII. Nursing Home Level of Care

12.1.a The provision of nursing home level of care means the provision of services that require specialized knowledge, judgment and skill, all of which meet the standards of nursing as set forth in 26 V.S.A. § 1572 Chapter 28. A home that wishes to admit or retain a resident who requires nursing home level of care shall~~must~~ obtain prior written approval from the licensing agency in the form of a variance and shall~~must~~ demonstrate to the licensing agency's satisfaction that it has the capacity to provide the necessary care and services. Enhanced Residential Care providers must provide the services agreed to in the Enhanced Residential Care provider agreement with the state of Vermont and outlined in their Admissions Agreements with ERC residents.

12.1.b -Residents who require more than nursing overview or medication management on a short-term or temporary basis may be retained in a residential care home without a variance, provided that the home meets the requirements of subsections (1) - (5) below:

(1) The nursing services required are:

i.a . Provided fewer than three times per week; or

ii.b. -Provided for up to seven days a week for no more than thirty (30) days and the resident's condition is improving during that time and the nursing service provided is limited in nature; or

iii.c. -Provided by a Medicare-certified hospice program; and

(2) The home 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; and

(3) The home is able to meet the resident's needs without detracting from services to other residents; and

(4) The home has a uniform consumer disclosure that is provided 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

(5) Residents receiving such care are fully informed of their options and agree to such care in the residential care home.

~~12.2 If a home's registered nurse assesses a resident and determines that the resident requires nursing home level of care, the resident shall~~must~~ be given a notice of discharge unless the home's Manager applies for, and the licensing agency grants, a level of care variance that allows the home to retain the resident. If a home's registered nurse~~



~~assesses a potential resident and determines that the potential resident requires nursing home level of care, the home's Manager shall must apply for, and be granted, a variance prior to admitting the individual to the home.~~

12.32 Staffing - A home with residents who are assessed as needing nursing home level of care shall must have sufficient staff to provide nursing and related services to attain or maintain the highest practicable physical, mental and psycho-social well-being of each resident, as determined by resident assessments and individual plans of care or as specified by the licensing agency.

(1) The home shall must have at least one licensed nurse on the premises or available on-call who has the professional licensure or capacity through facility policies and procedures to assess residents when needed, and provide nursing care on a twenty-four (24) hour basis, seven (7) days a week.

(2) A home with six (6) or more nursing home level of care residents shall must have at least two (2) caregivers on duty on each shift. The second caregiver on the night shift is not required to be awake.

(3) A home with residents who are assessed as being incapable of self-evacuation shall must have sufficient staff during each shift to ensure the safe evacuation, if applicable, of all residents, including those needing assistance.

(4) The registered nurse shall must be available onsite at least one (1) hour per week per nursing home level of care resident.

(5) There shall must be sufficient direct care staff onsite to ensure at least two (2) hours per day of assistance with personal care, per nursing home level of care resident.

12.43 -- Quality of Life - A home with nursing home level of care residents shall must care for its residents in a manner and in an environment that promotes the maintenance or enhancement of each resident's quality of life.

12.43.a The home shall must provide, based on the preferences of each resident, an ongoing program of activities designed to meet the interests of each resident, encouraging both independence and interaction in the community.

~~12.5 — Based on the comprehensive assessment of a resident, the home shall ensure that residents receive the treatment and care necessary to maintain or achieve the highest practicable well-being in accordance with professional standards of practice, the comprehensive person-centered care plan, and the resident's choices.~~

12.54.a- Activities of Daily Living - The home shall must ensure that a resident's abilities in activities of daily living do not diminish unless the circumstances of the resident's clinical condition demonstrate that diminution was unavoidable.

~~(1)12.54.a~~ The home shall must provide services to any resident who is unable to carry out the activities of daily living necessary to maintain mobility, good nutrition, grooming, and personal and oral hygiene.

~~12.6 A home with any nursing home level of care residents shall submit a report of all nursing home level of care residents, on a quarterly basis, on a form provided by the licensing agency.~~

12.65 Bed Rails - Prior to installing a side or bed rail, the licensee shall must attempt to use appropriate alternatives. If a side or bed rail is used, the licensee shall must ensure the correct installation, use, assessment and maintenance of the rail(s).

- 12.76 Quality Assurance and Performance Improvement - A home with any nursing home level of care residents ~~shall~~ must develop a quality improvement program that identifies and addresses quality issues.
- 12.76.a The licensee ~~shall~~ must assemble and employ an internal quality improvement committee.
- (1) The quality improvement committee ~~shall~~ must consist of the manager of the home, a registered nurse, and at least one other direct care staff member. Residents, and other ~~representatives may be added~~ as needed to achieve program objectives.
  - (2) The quality improvement committee ~~shall~~ must meet at least quarterly to identify issues with quality improvement, to develop and implement appropriate plans of action to correct identified quality deficiencies, and to review and act upon resident satisfaction surveys.
  - (3) The quality improvement committee ~~shall~~ must allow residents to have meaningful opportunities to provide input, to discuss grievances, and to review plans of action.
- 12.76.b The home ~~shall~~ must conduct resident satisfaction surveys at least annually and ~~shall~~ must compile the results of such surveys to identify issues to be addressed by the quality improvement committee.
- 12.76.c The quality improvement committee ~~shall~~ must maintain the confidentiality of individual resident information from satisfaction surveys, from input at committee meetings, or from the complaint or grievance process, with specific complaints and grievances reviewed only by appropriate staff and outside parties, as requested by the resident. Such information ~~shall~~ must be made available to the licensing agency upon request.
- 12.76.d No good faith efforts by the quality improvement committee to identify and correct quality deficiencies ~~shall~~ will be used as a basis for sanctions.
- 12.7 A home with any nursing home level of care residents shall submit a report of all nursing home level of care residents, on a quarterly basis, on a form provided by the licensing agency.

### XIII. Assisted Living Residence

#### H.13.1 General Provisions

- 1-13.1.a Introduction. The following provisions are designed to protect the welfare and rights of residents and to ensure that residents receive quality care. The following provisions also are intended to ensure that homes licensed as assisted living residences promote resident individuality, privacy, dignity, self-direction, and active participation in decision-making.
- 1-213.1.b Statutory Authority. The Agency of Human Services has designated the Department of Disabilities, Aging and Independent Living, Division of Licensing and Protection, as the licensing and regulatory agency for assisted living residences as defined at 33 V.S.A. §7102(1).

#### H.13.2 Exceptions

- 2-13.2.a To obtain and maintain a license to operate an assisted living residence an applicant or licensee must meet all ~~of~~ the requirements applicable to Residential Care Homes, with the exception of except for the following subsections of those ~~regulations~~ rules:
- ~~a-~~(1) Eligibility: 5.1 (a) and 5.1(b).
  - ~~b-~~(2) Uniform Consumer Disclosure and Admission Agreements: 5.2(a) and ~~5.2(h)~~.

~~e.~~(3) Physician Services: 5.8(a).

~~d.~~(4) Level of Care and Nursing Services: 5.9(a), (b) and (ed).

~~e.~~(5) Residents' Rooms: 9.2(a), (b), (c)(2), (2), (g), (h), and (i). If a unit is rented furnished, however, or is being converted from a Level III unit, there is no exception to the requirements of (9.2(c)(2).

~~f.~~(6) Toilet, Bathing, and Lavatory Facilities: 9.3(b)

### ~~III.~~13.3 Licenses

~~3.1~~13.3.a The licensing agency shall will not issue an assisted living residence license to an applicant unless all of the applicable requirements of section #, the Residential Care Homes Licensing Rules for a -Level III home are met, with exceptions noted above.

~~3.2~~13.3.b The licensing agency shall will not issue an assisted living residence license unless all residence units within the facility meet the definition for assisted living residence as set forth above.

### ~~IV.~~13.4 Resident Care and Services

~~4.1~~13.4.a Eligibility. The licensee may accept and retain 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 assisted living residence, with the following exceptions:

~~a.~~(1) The licensee shall 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; and

~~b.~~(2) The licensee shall may not admit any individual who has the following equipment, treatment, or care needs: ventilator, stage III, or IV pressure ulcer, naso-pharayneal, oral or tracheal suctioning or two-person assistance to transfer from bed or chair or to ambulate.

A current resident of the facility who develops a need for equipment, treatment, or care as listed above in (b2) or who develops a terminal illness may remain in the residence so long as the licensee can safely meet the resident's needs and/or the resident's care needs are met by an appropriate licensed provider.

~~4.2~~13.4.b Admission. The licensee may require a lease in addition to the written admission agreement required pursuant to the Residential Care Homes Licensing Rules.

~~4.3~~13.4.c Aging in Place. A licensee shall must provide personal care and supportive services, which may include nursing services, to meet the needs and care plans of residents assessed at or below the following levels of need according to the assessment protocol specified by the licensing agency:

~~a.~~(1) Mobility, ambulation, and transfer needs can be met by with the assistance of one staff person;

~~b.~~(2) A cognitive impairment at a moderate or lesser degree of severity; or

~~e.~~(3) Behavioral symptoms that consistently respond to appropriate intervention.

4.413.4.d Licensed Health Care Provider Services. Residents who have an identified acute or chronic medical problem or who are deemed to need nursing overview or nursing care shall must be under the continuing general care of a licensed health care provider of their choosing.

4.513.4.e - Involuntary Discharge of Residents. The expectation is that individuals will be permitted to age in place as set forth in Section 13.4.c and not be required to leave an assisted living residence involuntarily. In those instances in which When a resident is required to leave, however, the provisions of this section shall supersede the requirements of the Residential Care Home Licensing Regulations Rules, Section 5.3.-a(1). The licensee shall may not initiate a discharge because a resident's choice might pose a risk if the resident is their own decision-maker and the choice is informed and poses a danger or risk only to the resident. An involuntary discharge of a resident may occur only when:

a.(1) 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;

b.(2) The resident presents a serious threat to residents or staff that cannot be managed through interventions or care planning;

c.(3) A court has ordered the discharge or eviction;

d.(4) The resident failed to pay rental, service, or care charges in accordance with the admission agreement;

e.(5) The resident refuses to abide by the terms of the admission agreement; or

f.(6) If the licensee can no longer meet the resident's level of care needs in accordance with Section 13.4.c.

4.613.4.f Refusals and Non-Duplication. The licensee shall must not provide or arrange any service for a resident that the resident refuses or chooses to obtain from another source.

4.713.4.g Care Plans. The licensee, the resident, and/or the resident's legal representative shall must work together to develop and maintain a written resident care plan for those residents who require or receive care. The care plan shall must describe the assessed needs and choices of the resident and shall must support the resident's dignity, privacy, choice, individuality, and independence. The licensee shall must review the plan at least annually, and whenever the resident's condition or circumstances warrant a review, including whenever a resident's decision, behavior, or action places the resident or others at risk of harm or the resident is incapable of engaging in a negotiated risk agreement.

4.813.4.h Services. The licensee shall must have the capacity to provide the following services:

a.(1) A daily program of activities and socialization opportunities, including periodic access to community resources; and

b.(2) Social services, which shall must include information, referral, and coordination with other appropriate community programs and resources such as hospice, home health, transportation, and other services necessary to support the resident who is aging in place.

4.913.4.i Uniform Consumer Disclosure. A licensee ~~shall~~ must state in its licensing application and in a uniform consumer disclosure the services it will provide, the public programs or benefits that it accepts or delivers, the policies that affect a resident's ability to remain in the residence, and any physical plant features that vary from the assisted living residence requirements found in Section 13.9.

~~a.~~(1) The uniform consumer disclosure ~~shall~~ must be completed on a form provided by the licensing agency and ~~shall~~ must be kept on file by the licensee.

~~b.~~(2) The uniform consumer disclosure ~~shall~~ must describe all service packages, tiers, and rates.

~~e.~~(3) The uniform disclosure form ~~shall~~ must include a statement that rates are subject to change, including rate changes due to increased care needs, and describe the situations in which the change(s) could occur.

~~d.~~(4) The disclosure ~~shall~~ must be provided:

~~ia.~~ to residents prior to or at admission and at any time it is changed or is requested by the resident; and

~~iib.~~ -to the public upon request.

~~e.~~(5) The availability of a uniform consumer disclosure ~~shall~~ must be noted prominently in all marketing brochures and written materials.

~~f.~~(6) A licensee who has specialized programs such as dementia care ~~shall~~ must include a written statement of philosophy and mission and a description of how the assisted living residence can meet the specialized needs of residents in the uniform disclosure form and in the admission agreement.

~~4.10~~13.4.j Notice of Changes. The licensee ~~shall~~ must give each resident and the licensing agency a written ninety-day notice when its services, rates, retention policies, or physical plant will change in a way that will significantly enhance or significantly restrict the potential for aging in place.

~~4.11~~13.4.k Training. The licensee ~~shall~~ must provide training in the philosophy and principles of assisted living to all staff. Staff who ~~have any direct~~ regularly interact with residents in the facility and/or programs must have training in understanding dementia and ~~are~~ responsibility ~~shall have training in~~ communications skills specific to persons with Alzheimer's Disease and other types of dementia.

~~4.12~~13.4.l Resident Records. In addition to those documents required by the Residential Care Home Licensing ~~Regulations~~ Rules, the licensee ~~shall~~ must ensure resident records include:

~~a.~~(1) Copies of any negotiated risk agreements and care plans; and

~~b.~~(2) Copies of lease agreements, if applicable and/or required.

~~4.13~~13.4.m -Licensee Records. The licensee ~~shall~~ must maintain current records of any contracts and/or subcontracts with outside providers, agencies, suppliers, and public programs. Residents ~~shall~~ must be given access to such documents and provided a copy upon request.

### ~~13.5~~ Policies and Procedures

~~5.13.5.a~~ Policies. In addition to those policies required under the Residential Care Home Licensing ~~Regulations~~Rules, the licensee ~~shall~~must establish policies and procedures regarding:

- ~~a.~~(1) Unexplained absences of residents;
- ~~b.~~(2) Behavioral symptoms of the residents, including but not limited to wandering, sexually inappropriate or socially disruptive behaviors, or resistance to care;
- ~~c.~~(3) Managing residents with declining cognitive status, including incompetence, and setting forth when and how a legal guardian will be obtained;
- ~~d.~~(4) Negotiated risk agreement process, including the identity of the responsible staff person; and
- ~~e.~~(5) Use by the residents of the community kitchen, if applicable, as well as other common areas.

13.5.b Quality Improvement. The licensee must develop a quality improvement program that identifies and addresses quality issues. At a minimum, the licensee must:

(1) Have an internal quality improvement committee that must: (i) consist of the director of the assisted living residence, a registered nurse, at least one other direct care staff member, a resident and other representatives as needed to achieve program objectives; (ii) meet at least quarterly to identify issues with respect to quality improvement, to develop and implement appropriate plans of action and to review and act upon resident satisfaction surveys; (iii) allow residents to have meaningful opportunities to provide input, to discuss grievances and to review plans of action.

(2) Conduct resident satisfaction surveys at least annually and compile the results of such surveys to identify issues to be addressed by the quality improvement committee.

(3) Maintain confidentiality of individual resident information from satisfaction surveys, input at committee meetings or from the complaint or grievance process, with specific complaints and grievances reviewed only by appropriate staff and outside parties as requested by the resident. Such information must be made available to the licensing agency upon request.

### ~~13.6~~ Agreements and Charges

~~6.13.6.a~~ The purchase of services in an assisted living residence ~~shall~~must be optional and solely the voluntary choice of a resident. Residents have the right to arrange for third-party services not available through the assisted living residence through a provider of their choice.

~~6.213.6.b~~ The terms of occupancy of a resident unit, together with any utilities, maintenance or management services provided by the licensee, ~~shall~~must be included in a written admission agreement and, if applicable, a written lease separate from the admission agreement. When a separate lease agreement regarding the resident unit is entered into, the existence of that agreement ~~shall~~must be noted in the admission agreement.

~~6.313.6.c~~ The licensee ~~shall~~must not vary charges for the occupancy of the resident unit and for utilities based on the resident's long-term care needs. The licensee may charge

different amounts based on the size of the unit, the included amenities, and/or any published sliding fee scale or system of housing subsidies administered by the licensee.

~~6.4~~13.6.d The licensee ~~shall~~may charge for personal care services to meet a resident's health and welfare needs only as bundled daily, weekly, or monthly rates. If a licensee has rates that vary according to tiers of services, the rates for the tiers may vary according to the amount and level of services provided to meet the different levels of need of residents. The differences between the tiers of services must be clearly defined and capable of measurement.

~~6.5~~13.6.e A licensee ~~shall~~must establish a rate to meet the needs and care plans of all residents assessed as below the Nursing Home Level of Care Guidelines, which ~~shall~~will be known as the basic care package. A licensee may establish a rate for independent residents who do not purchase a personal care package, ~~a rate that shall~~which will be known as an independent package. For residents who meet nursing home levels of care within the mandatory scope of care for assisted living, the licensee ~~shall~~must have two tiers of services and rates. A licensee who has a policy of retaining residents above the mandatory scope of care for assisted living ~~shall~~must disclose any definitions, tiers, and methodologies used to determine the levels of care and bundled rates.

~~6.6~~13.6.f A licensee may charge on a per service basis only for those services that are not required by Assisted Living Residence Licensing ~~Regulations~~Rules. Such services may include, but are not limited to, additional transportation and housekeeping services, hair dressing, social outings, daily papers, garage space, and any activities in addition to those daily activities provided to all residents.

### ~~VH~~13.7 *Negotiated Risk*

~~7.1~~13.7.a When the licensee determines that a resident's decision, behavior, or action places the resident at risk of serious harm, and the licensee has attempted and been unable to mitigate the risk of harm through care planning and other person-centered interventions, the licensee ~~shall~~must initiate a risk negotiation process to address the identified risk and to reach a mutually agreed-upon plan of action.

~~7.2~~13.7.b The licensee ~~shall~~must initiate the negotiated risk process by notifying the resident and, if applicable, the legal representative, verbally and in writing. The notice ~~shall~~must state that the resident is not required to enter into a negotiated risk agreement. The licensee ~~shall~~must also give notice to the resident and legal representative that the ~~s~~State Long--Term Care Ombudsman's Office is available if they have questions or concerns regarding the resident's rights. The notice must include the contact information for the Long--Term Care Ombudsman's Office.

~~7.3~~13.7.c If the licensee and the resident reach agreement, the mutually agreed upon plan ~~shall~~must be in writing.

~~a.~~(1) The written plan ~~shall~~must be dated and signed by both parties to the negotiation;

~~b.~~(2) Each party to the negotiation ~~shall~~must receive a copy of the written plan; and

~~c.~~(3) A copy of the plan ~~shall~~must be attached to and incorporated into the resident's care and service plan.

7.413.7.d If the licensee and the resident are not able to reach agreement, the licensee ~~shall~~**must** notify the ~~Office of the sState HLong tTerm eCare eOmbudsman~~ if the failure to reach agreement results in a notice of involuntary discharge. Licensees are not obligated to discharge the resident if a negotiated risk process is unsuccessful.

7.513.7.e Negotiated risk discussions and the plan ~~shall~~**must** be resident specific. A resident must never be asked to sign a written risk negotiation document before the licensee and the resident have discussed the issue and mutually agreed to the plan.

### **VIII13.8 Nutrition and Food Services**

8.113.8.a The licensee must have the capacity to provide a full meal and snack program. If such services are offered, the programs must meet the requirements of section 7.1 of the Residential Care Home Licensing ~~RegulationsRules~~. The licensee may allow residents to purchase less than a full meal and snack plan.

### **IX13.9 Physical Plant**

9.113.9.a Resident Units. All resident units must be private occupancy unless a resident voluntarily chooses to share the unit.

9.213.9.b At a minimum, resident units ~~shall~~**must** include the following:

a.(1) 225 square feet per unit, excluding bathrooms and closets, unless otherwise provided by these ~~regulationsrules~~.

b.(2) A private bedroom, private bathroom, living space, kitchen capacity, adequate space for storage, and a lockable door, unless otherwise permitted by these ~~regulationsrules~~. Studio/efficiency apartments that offer a private bedroom, living space and kitchen capacity in one large room, and include a private bathroom ~~shall~~**must** meet these requirements.

c.(3) -The bathroom ~~shall~~**must** be a separate room designed to provide privacy and ~~shall~~**must** be equipped with a toilet, with grab bars, a sink, hot and cold running water, a shower or bathtub, a mirror, and towel racks. Showers or bathtubs ~~shall~~**must** have non-skid surfaces and safety grab bars.

d.(4) Kitchens ~~shall~~**must** consist of a food preparation and storage area that includes, at a minimum, a refrigerator with freezer, cabinets, counter space, sink with hot and cold running water, a stove or microwave that can be removed or disconnected, and electric outlets.

e.(5) Each unit ~~shall~~**must** provide adequate closet space for clothing and belongings.

f.(6) All doors in units, including entrance doors, ~~shall~~**must** be accessible or adaptable for wheelchair use. Entrance doors to units ~~shall~~**must** have a locking device and ~~shall~~**must** be equipped with hardware that is accessible.

g.(7) All unit windows ~~shall~~**must** be made of clear glass and permit viewing to the outside.

h.(8) Light switches in the units ~~shall~~**must** be located at the entry, in the bedroom, and in the bathroom to control one or more light fixtures.

i.(9) Each unit ~~shall~~**must** have at least one telephone jack.



j.(10)- Each unit shall must have individual temperature controls for heating and cooling.

k.(11) Each unit shall must be equipped with an emergency response system that will alert the on-duty staff.

l.(12)- Each unit shall must be built in conformance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) or the equivalent state building code specifications.

#### 9.313.9.c Pre-existing structures.

a.(1) The licensing agency may grant a variance for pre-existing structures that differ from the minimum requirements set forth above. If such a variance is granted, the specifics of the structural limitations and the terms of the variance shall will be stated on the license. The licensee shall must include the information in the uniform disclosure form.

b.(2) The licensing agency may grant physical plant variances for pre-existing structures in the following instances:

ia. Resident units that do not meet the requirements for private kitchen space, but the facility has a community kitchen that includes a refrigerator, sink, cabinets for storage, stove or microwave oven, and a food preparation area. A community resident kitchen shall must not include be the kitchen used by the assisted living residence staff for the preparation of resident or employee meals, or for the storage of goods.

ib. Resident units in pre-existing structures not previously licensed as residential care homes must have at least 160 square feet of clear living space excluding the bathroom, closet(s), alcoves, and vestibules.

ic. If the pre-existing structure is a licensed residential care home that was in continuous operation as a licensed residential care home prior to July 1998, the resident unit clear living space, excluding the bathroom, closet(s), and alcoves, must be at least 100 square feet.

#### 9.413.9.d Common Areas

a.(1) The assisted living residence shall must have at least two common areas for use by all residents. The common areas shall must be designed to meet resident needs and shall must be accessible for wheelchair use. The common areas shall must provide residents with sufficient space for socialization and recreational activities.

b.(2) At least one common area shall must be available for resident use at any time, provided such use does not disturb the health, safety, and well-being of other residents.

#### 9.513.9.e Other Common Space

a.(1) If an assisted living residence has a community kitchen:

ia. -Residents shall must have unlimited access to the kitchen; and

ib.- Residents shall must have individual space in which to store personal food and supplies.

b.(2) Access to private or public outdoor recreation areas shall must be available to residents.

e.(3) There shall must be at least one public restroom in the assisted living residence that meets applicable local, state, and federal accessibility laws and guidelines. It shall must be convenient to the common areas.

d.(4) The assisted living residence shall must have accessible common dining space outside residential units sufficient to accommodate residents.

**Appendix A – Scope and Severity Grid**

		SCOPE		
		Isolated	Pattern	Widespread
SEVERITY				
4	Immediate jeopardy to resident health or safety	J	K	L
3	Actual harm that is not immediate jeopardy	G	H	I
2	No actual harm with potential for more than minimal harm that is not immediate jeopardy	D	E	F
1	No actual harm with potential for minimal negative impact	A	B	C



# **RESIDENTIAL CARE HOME AND ASSISTED LIVING RESIDENCE LICENSING RULES**

Agency of Human Services  
Department of Disabilities, Aging and Independent Living  
Division of Licensing and Protection  
HC 2 South, 280 State Drive  
Waterbury, Vermont 05671-2060

April 1, 2025

This material is available upon request in alternative formats.

# Table of Contents

<b>Residential Care Home Rules .....</b>	<b>1</b>
<b>I. General Provisions.....</b>	<b>1</b>
1.1 Introduction .....	1
1.2 Statutory Authority.....	1
1.3 Statement of Intent .....	1
1.4 Exception and Severability.....	1
1.5 Taxes .....	1
1.6 Material Misstatements .....	2
1.7 Appeals.....	2
1.8 License Required.....	2
<b>II. Definitions.....</b>	<b>2</b>
2.1 General Definitions .....	2
2.2 Specific Definitions.....	2
<b>III. Variances .....</b>	<b>8</b>
<b>IV. Licensing Procedures.....</b>	<b>9</b>
4.1. Application.....	9
4.2 Review Process .....	10
4.3 Assistive Community Care Services.....	10
4.4 Denial of Application .....	11
4.5 Re-application .....	11
4.6 Expiration.....	11
4.7 Change in Licensed Capacity.....	12
4.8 Temporary License.....	12
4.9 Change in Status.....	12
4.10 Separate License.....	12
4.11 Transfer Prohibited.....	13
4.12 License Certificate.....	13
4.13 Responsibility and Authority .....	13
4.14 Survey/Investigation.....	14
4.15 Violations: Notice Procedure .....	15
4.16 Enforcement .....	16
4.17 Identification of Unlicensed Homes.....	17
<b>V. Resident Care and Home Services.....</b>	<b>17</b>
5.1 Eligibility.....	17
5.2 Uniform Consumer Disclosure and Admission Agreements .....	18
5.3 Discharge and Transfer Requirements .....	20
5.4 Refunds.....	23
5.5 General Care.....	23
5.6 Special Care Units .....	24
5.7 Assessment .....	25
5.8 Licensed Health Care Provider Services.....	25
5.9 Nursing Services .....	26
5.10 Medication Management.....	27
5.11 Staff Services.....	31

5.12	Records/Reports .....	33
5.13	First Aid Equipment and Supplies .....	35
5.14	Restraints and Seclusion.....	35
5.15	Policies and Procedures.....	36
5.16	Transportation .....	36
5.17	Access by Ombudsman, Protection and Advocacy System.....	36
<b>VI.</b>	<b>Residents' Rights.....</b>	<b>37</b>
<b>VII.</b>	<b>Nutrition and Food Services .....</b>	<b>39</b>
7.1	Food Services .....	39
7.2	Food Safety and Sanitation .....	40
7.3	Food Storage and Equipment .....	40
<b>VIII.</b>	<b>Laundry Services .....</b>	<b>41</b>
<b>IX.</b>	<b>Physical Plant .....</b>	<b>41</b>
9.1	Environment.....	41
9.2	Residents' Rooms.....	42
9.3	Toilet, Bathing and Lavatory Facilities.....	42
9.4	Recreation and Dining Rooms .....	43
9.5	Home Requirements for Persons with Disabilities .....	43
9.6	Plumbing .....	43
9.7	Water Supply.....	43
9.8	Heating .....	44
9.9	Ventilation.....	44
9.10	Life Safety/Building Construction .....	44
9.11	Disaster and Emergency Preparedness.....	44
<b>X.</b>	<b>Pets .....</b>	<b>44</b>
<b>XI.</b>	<b>Resident Funds and Property .....</b>	<b>45</b>
<b>XII.</b>	<b>Nursing Home Level of Care .....</b>	<b>46</b>
<b>XIII.</b>	<b>Assisted Living Residence.....</b>	<b>48</b>
13.1	General Provisions .....	48
13.2	Exceptions .....	48
13.3	Licenses.....	48
13.4	Resident Care and Services .....	49
13.5	Policies and Procedures.....	51
13.6	Agreements and Charges.....	52
13.7	Negotiated Risk .....	52
13.8	Nutrition and Food Services.....	53
13.9	Physical Plant.....	53
<b>Appendix A – Scope and Severity Grid .....</b>		<b>56</b>

## **Residential Care Home Rules**

### **I. General Provisions**

#### **1.1 Introduction**

The State regulates residential care homes and assisted living residences for the dual purposes of protecting the welfare and rights of residents and assuring they receive an appropriate quality of care. In general, residential care homes provide care to persons unable to live wholly independently but not in need of the level of care and services provided in a nursing home. Toward that end, these rules are designed to foster personal independence on the part of residents and a home-like environment in the homes. However, through approved variances and Vermont Medicaid waiver programs, many Residential Care Homes now house numerous residents who require nursing home level of care, and these rules are also designed to ensure additional protections and services for those residents at nursing home level of care who reside in Vermont's residential care homes.

Residential care homes are licensed as either Level IV or Level III. Both levels must provide room and board, assistance with personal care, general supervision and/or medication management. Level III homes also must provide the additional service of nursing overview.

The intention of the Department of Disabilities, Aging, and Independent Living is to ensure residential care home providers attain and maintain compliance with these rules.

All notices to, and information for, residents must be worded in a way that residents of the home can understand, presented in a large enough font for residents to read, visually accessible to all residents, and made available in other languages and formats when needed, based on resident need and/or request.

#### **1.2 Statutory Authority**

Residential care homes and assisted living residences are subject to the provisions of 33 V.S.A. Chapter 71. The Agency of Human Services has designated the Department of Disabilities, Aging, and Independent Living, Division of Licensing and Protection, as the licensing and regulatory agency for residential care homes and assisted living residences. That statute and the provisions of these rules guide them in their work.

#### **1.3 Statement of Intent**

Upon the effective date of these rules, all residential care homes and assisted living residences in Vermont will be required to adhere to the rules as adopted.

#### **1.4 Exception and Severability**

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

#### **1.5 Taxes**

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



## **1.6 *Material Misstatements***

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

## **1.7 *Appeals***

A person aggrieved by a decision of the licensing agency may file a request for a Commissioner's hearing, and, if dissatisfied with the Commissioner's decision, may request a fair hearing with the Human Services Board as provided in 3 V.S.A. §3091.

## **1.8 *License Required***

The terms residential care home, assisted living, or assisted living residence or words to that effect may not be used by any facility in its title, brochure, admission agreement, or other written or promotional materials unless the facility has a valid license to operate as a residential care home or assisted living residence issued by the Department of Disabilities, Aging and Independent Living.

## **II. *Definitions***

### **2.1 *General Definitions***

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

### **2.2 *Specific Definitions***

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

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

**“Adequate supervision”** means the appropriate level and number of staff required in a particular situation, the competency and training of that staff, and the frequency of the need.

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

**“Admission”** means the point in time at which a resident moves into a facility that has agreed to provide services. “Moves into” includes the period immediately preceding when a facility begins providing services, such as personal care, general supervision, medication management, or nursing overview, to the resident.

**“Aging in place”** means to remain in a residence despite physical or mental decline that might occur with aging or with disability, as described in 13.4c.

**“Assisted living residence”** means a program or facility that combines housing, health, and supportive services to support resident independence and aging in place. At a minimum, assisted living residences must offer, within a homelike setting, a private bedroom, private bath, living space, kitchen capacity, and a lockable door. Assisted living must promote resident self-direction and active participation in decision-making while emphasizing individuality, privacy, and dignity.

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

- "Assistive community care services"** means the Medicaid State Plan service that pays for the cost of a bundle of health care services delivered to Medicaid beneficiaries who live in participating Level III residential care homes. The service bundle includes case management, assistance with the performance of activities of daily living, medication assistance, monitoring and administration, 24 hour on-site assistive therapy, restorative nursing, nursing assessment, health monitoring, and routine nursing tasks.
- "Assistive therapy"** means activities, techniques and methods designed to maintain or improve ADLs, cognitive status or behavior.
- "Capable of self-administration"** means a resident is able to direct the administration of medication by being able to at least identify the resident's medication and describe how, why and when a medication is to be administered; choose whether to take the medication or not; and communicate to the staff if the medication has had the desired effect or unintended side effects.
- "Case management"** means to assist residents in gaining access to needed medical, social and other services. In addition to the coordination of activities required in the resident's plan of care, it includes consultation with providers and support person(s).
- "Chemical restraint"** means any drug that is used for discipline or convenience and not required to treat medical symptoms.
- "Clinician order for life sustaining treatment (COLST)"** means a clinician's order or orders for treatment, such as intubation, mechanical ventilation, transfer to hospital, antibiotics, artificially administered nutrition, or another medical intervention. A COLST may include a DNR order that meets the requirements of 18 V.S.A. §9708.
- "Controlled substance"** means a drug or chemical whose manufacture, possession, or use is regulated by Vermont or federal law.
- "Day of service"** means a day when an eligible resident is living in the home and is provided with the resident's ACCS services. A day of service does not include any day in which a resident is absent from the home for the entire 24 hours of the calendar day and any day on which a resident is discharged or transferred from the home to another care setting (hospital, nursing home, etc.).
- "Delegation of nursing tasks"** means the formal process approved by the Vermont Board of Nursing which permits professional nurses to assign nursing tasks to other individuals.
- "Discharge"** means movement of a resident out of the home without expectation that the resident will return.
- "DNR"** means do not resuscitate.
- "Drug"** means (A) articles recognized in the official United States pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (D) articles intended for use as a component of any article specified in clause (A), (B), or (C). As used in this rule, the

term “drug” includes “medication.”

**"Emergency discharge"** means an immediate, unexpected discharge from a home that is necessary for the health and safety of the resident, or when a natural disaster or emergency necessitates the evacuation of the residents, the resident presents an immediate threat to themselves or others, or the process is ordered or permitted by a court.

**"ERC"** means Enhanced Residential Care, a 24-hour package of services provided by an approved Level III Residential Care Home or an Assisted Living Residence.

**"Financial incapacity"** means the lack of sufficient cash or established credit necessary to operate all aspects of the home, including payment for building costs, utilities, salaries, food and other resident services for a reasonable period of time going forward.

**"Home"** means a licensed residential care home or assisted living residence.

**"Immediate Jeopardy"** means a situation in which the home’s noncompliance with one or more requirements has caused, or is likely to cause serious injury, serious harm, serious impairment, or death to a resident.

**"Incapable of self-evacuation"** means the inability reliably to move independently to a point of safety in a timely manner.

**"Informed consent"** means the consent given voluntarily by an individual with capacity, on their own behalf or on behalf of another if acting in the role of an agent, guardian, or surrogate in the case of DNR/COLST orders, after being fully informed of the nature, benefits, risks, and consequences of the proposed health care, of alternative health care, and of no health care.

**"Inspection"** means an on-site visit to or survey of the home by staff of the Division of Licensing and Protection or fire safety inspectors from the Department of Labor and Industry to evaluate care and services and determine if the home is in compliance with the rules.

**"Investigation"** means any gathering of facts, in the home or elsewhere, in response to a complaint or to an allegation that the home is not in compliance with rules in order to determine if a home is in compliance with the rules.

**"Lease"** means a written agreement between the assisted living residence and a resident regarding the resident’s rental of the resident unit. A lease may be required in addition to an admission agreement.

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

**"Level III"** means a residential care home licensed and required to provide room, board, personal care, general supervision, medication management and nursing overview as defined by these rules.

**"Level IV"** means a residential care home licensed and required to provide room, board, personal care, general supervision and medication management as defined by these

rules.

**"License certificate"** means a document issued by the licensing agency which signifies that a home is entitled to operate.

**"Licensed capacity"** is the maximum number of residents which the residential care home or assisted living residence is licensed to have at one time.

**"Licensed health care provider"** means an appropriately qualified individual who provides medical care including a physician, a physician's assistant and an advanced-practice registered nurse (APRN).

**"Licensed home"** is a residential care home or assisted living residence possessing a valid license to operate from the licensing agency.

**"Licensee"** means an individual, group of individuals, or corporation in whose name the license is issued and upon whom rests the legal responsibility for maintaining compliance with the rules.

**"Licensing agency"** means the Department of Disabilities, Aging, and Independent Living, Division of Licensing and Protection.

**"Manager"** means the staff person who has been appointed by the home licensee or owner as responsible for the daily management of a home, including supervision of employees and residents.

**"Mechanical restraint"** means any equipment, material or device that may be applied to a resident or the resident's environment for the purpose of restricting the resident's activity. Mechanical restraints can include, but are not limited to (depending on how they are used and the resident's abilities), full bed rails, gates, half doors, geri chairs and other reclining chairs, positioning devices/cushions, roll bars, , wrist and ankle restraints, vests and pelvic restraints. The use of mechanical restraint is a treatment procedure that requires nursing overview.

**"Medication error"** means the observed or identified preparation or administration of medications or drugs that is not in accordance with: the prescriber's order; the manufacturer's specifications regarding the preparation and administration of the medication or drug; or accepted professional standards and principles that apply to professionals providing services.

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

**"Misappropriation of property"** means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent, or in situations where the resident is not competent to give consent.

**"Negotiated Risk Agreement"** means a formal, mutually-agreed upon, written understanding between a home and the resident, that results after balancing a resident's choices and capabilities with the possibility that those choices will place

the resident at risk of harm. Negotiated risk does not constitute a waiver of liability and must not infringe upon the resident's rights.

**"Next of kin"** means the resident's spouse or civil union partner; an individual in a long-term relationship of indefinite duration, in which the individual has demonstrated an actual commitment to the resident similar to the commitment of a spouse, and in which this individual and the resident consider themselves to be responsible for each other's well-being; the resident's adult children; the resident's parents; and the resident's adult siblings.

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

**"Nursing care"** means the performance of services necessary to care for the sick or injured and which require specialized knowledge, judgment and skill and meets the standards of the nursing regimen or the medical regimen, or both, as defined in 26 V.S.A. §1572(2) and (3).

**"Nursing home level of care"** means 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; or, on a 24-hour basis, health-related care and services to individuals who, because of their mental or physical condition, require nursing care and services.

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

**"Owner"** means any individual or any person affiliated with a corporation, partnership, or association with ten (10) percent or greater ownership interest in the business or agency licensed as a home and who:

1. purports to or exercises authority of an owner in the business or agency;
2. applies to operate or operates the business or agency;
3. maintains an office on the premises of the home;
4. has direct access to persons receiving care at the home;
5. provides direct personal supervision of home personnel by being immediately available to provide assistance and direction during the time services are being provided; or
6. enters into a contract to acquire ownership of such a business or agency.

**"Person-centered care"** means care provided by a home in a manner in which the resident is viewed by the home as the locus of control and is supported by the home in making their own choices and in having control over their daily life.

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

**"Plan of care"** means a written description of the steps that will be taken to meet the psychiatric, social, nursing and medical needs and goals of a resident; also refer to as "care plan".

**"Plan of correction"** means a specific, time-limited plan of action, approved by the

licensing agency, which states how and when a violation will be corrected.

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

**"Psychoactive drug"** means a drug that is used to alter mood or behavior, including antipsychotic, anti-anxiety, antidepressant, stimulant or mood stabilizing drugs. This also includes anticonvulsants when used for behavior control.

**"Psychosocial care"** means care necessary to address an identified psychiatric, psychological, behavioral or emotional problem, including problems related to adjustment to the home, bereavement and conflict with other residents.

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

**"Resident"** means any individual, unrelated to the operator, who enters a home in order to receive room, board, personal care, general supervision, medication management, or nursing overview as defined by these rules. For the purposes of these rules, "resident" also means the individual legally authorized to act on the resident's behalf when the resident is no longer able to exercise any or all of their rights.

**"Resident representative"** means either of the following: (A) an individual chosen by the resident to act on their behalf in order to support the resident with decision making; accessing the resident's own medical, social, or other personal information; managing financial matters; receiving notifications; or a combination of these; or (B) resident's legal representative.

**"Residential care home"** means a place, however named, excluding a licensed foster home, which provides for profit or otherwise, room, board and personal care to three or more residents unrelated to the licensee.

**"Restorative nursing"** means services to promote and maintain function as defined in the resident's service plan of care.

**"Serious injury"** means bodily injury that causes a substantial risk of death, a substantial loss or impairment of the function of any bodily member or organ, a substantial impairment of health, or substantial disfigurement.

**"Staff"** means any individual other than a resident who is either the licensee or is an agent or employee of the licensee, and who performs any service or carries out any duties at or for the home which are subject to these rules.

**"Structured environment"** means a situation in which a home arranges medical appointments, procures medications, shops, provides transportation or other similar activities on behalf of a resident.

**"Supervision"** (of residents) means providing a structured environment and staffing to ensure the resident's needs for food, shelter, medical care, socialization and safety are met. Supervision also refers to an intervention and means of mitigating the risk of an accident involving a resident.

**"Therapeutic diet"** means a diet ordered by a licensed health care provider to manage problematic health conditions. Examples include: calorie specific, low-salt, low-fat, no added sugar, supplemental nutrition, and altered consistency.

**"Transfer"** means the movement of a resident to another bed within the home or to another health care setting with return to the home anticipated.

**"Trauma-Informed Care"** is an approach to delivering care that involves understanding, recognizing and responding to the effects of all types of trauma; Recognizing the widespread impact and signs and symptoms of trauma in residents; and avoiding re-traumatization.

**"Unlicensed home"** means a place, however named, which meets the definition of a residential care home and which does not possess a license to operate.

**"Unrelated to the operator"** means anyone other than the licensee's spouse (including an individual who has entered into a civil union), mother, father, grandparent, child, grandchild, uncle, aunt, nephew, niece, or sibling, or any of the listed relationships acquired through legal marriage.

**"Variance"** means a written determination from the licensing agency, based upon the written request of a licensee, which temporarily and, in limited, defined circumstances, waives compliance with a specific regulation.

**"Violation"** means a condition or practice in the home which is out of compliance with the rules.

### **III. Variances**

- 3.1. Variances from these rules may be granted upon a determination by the licensing agency that:
  - 3.1.a Strict compliance would impose a substantial hardship on the licensee or the resident; and
  - 3.1.b The licensee will otherwise meet the goal of the statutory provision or rule; and
  - 3.1.c A variance will not result in less protection of the health, safety and welfare of the residents.
- 3.2 A variance will not be granted from a statute or regulation pertaining to residents' rights.
- 3.3 A home requesting a variance must contact the licensing agency in writing describing how the variance request meets the criteria in 3.1 above.
- 3.4 Variances are subject to review and termination at any time.
- 3.5 A request for a variance from section 5.1.a to retain or admit a resident whose needs exceed that for which the home is licensed to provide must include, with each request, all of the following:
  - 3.5.a A current resident assessment on the level of care (LOC) variance request form, available on the DLP website, that describes the resident's level of care needs, and sets forth in detail how the home will meet those needs,
  - 3.5.b A written statement from the resident or the resident's legal representative attesting to the resident's fully informed choice to remain in the home; and stating that the resident or the resident's legal representative has been informed the resident will have to leave if the variance is denied or terminated,
  - 3.5.c A written statement from the resident's licensed health care provider giving the resident's prognosis and recommending retention at or admission to the home.

#### ***IV. Licensing Procedures***

##### ***4.1. Application***

- 4.1.a Any person or entity desiring to operate or establish a Residential Care Home or Assisted Living Residence must submit a licensing application to the licensing agency.

Department of Disabilities, Aging and Independent Living  
Division of Licensing and Protection  
HC 2 South, 280 State Drive  
Waterbury, Vermont 05671-2060

In addition, such person or entity must:

- 4.1.b Provide written evidence to the licensing agency of compliance with local zoning codes, or a statement signed by the city, town or village clerk that such a code has not been adopted in the community.
- 4.1.c At least ninety (90) days prior to the projected opening date, request inspections by all entities referenced in subsection 4.2.a and b below to which plans and specifications were submitted. Modifications must be made as required by these agencies to achieve full code compliance.
- 4.1.d Provide the licensing agency with at least three references from unrelated persons able to attest to the prospective licensee's professional experience with residential care, assisted living, or health care management, and attesting to the prospective licensee's character.
- 4.1.e Provide the licensing agency with the name(s) of the owner(s) of the home, if different from the prospective licensee.
- 4.1.f Provide the licensing agency with contact information for the prospective licensee and the owner(s) of the proposed home and for the owner(s) of the building that will be used as the home, as well as an organizational chart, name of the owners' agent, if any, and other relevant information about the parent company.
- 4.1.g Provide the licensing agency with a statement attesting to the financial stability of the proposed owner(s) of the home.
- 4.1.h Provide the licensing agency with a written statement attesting that the owner of the physical plant in which the home will be located agrees to maintain the physical plant in a safe and habitable condition and in compliance with all applicable health and safety codes.
- 4.1.i Any residence that wishes to have a "floating" licensed bed program, which applies to individual residents and not fixed rooms, must obtain a residential care home license from the licensing agency prior to establishing and operating any floating licensed beds. Approval will be based on a demonstration by the home that:
- A. The home will maintain a roster of residents in the floating license beds that clearly document dates of participation for each resident;
  - B. Staff is separate from any independent living staff, staff of the licensed beds are kept continuously aware of who is currently receiving services, and staffing plans are in place to address needs of residents that are in various areas and/or levels of a building;
  - C. Admission agreements clearly identify the nature of the floating license and must be



issued and signed each time a resident receives RCH services. The agreement must contain wording that allows the resident to stay in their room or unit upon discharge from RCH services.

D. The home is in compliance with Division of Fire Safety requirements for all resident rooms in the area of participation.

E. The home has detailed policies and procedures about how the program will be implemented and run, which must include admission and discharge criteria.

#### **4.2 *Review Process***

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

4.2.a Provide documentation attesting that all building plans have been submitted to and approved by the Department of Public Safety's Division of Fire Safety for compliance with the fire safety code and accessibility.

4.2.b The home must submit evidence of compliance with all Department of Environmental Conservation requirements related to water and sewage systems.

#### **4.3 *Assistive Community Care Services***

4.3.a To participate as an Assistive Community Care Services (ACCS) Medicaid provider, a home must be:

- (1) Licensed as a Level III home;
- (2) Maintained in compliance with the Residential Care Home or Assisted Living Residence Licensing Rules; and
- (3) Enrolled as a Medicaid provider.

4.3.b A home must submit a letter requesting ACCS status to the licensing agency that includes:

- (1) A brief statement of interest in the program;
- (2) A date when the home proposes to begin participation in the program; and
- (3) Whether any residents eligible for the program currently reside in the home.
- (4) A proposed amended resident agreement reflecting program participation terms consistent with these rules;
- (5) Proposed amended policies and procedures reflecting participation in the ACCS program.
- (6) A statement certifying that all of the services required in the ACCS definition found at 2.2. of the rules are available and will be provided to meet the assessed needs of each resident.

4.3.c The licensing agency will review the request and issue a response in writing within fourteen days. The response will include the licensing agency's decision, the reasons for the decision, and if the decision is to approve the effective date.

4.3.d Upon receiving approval to enroll in the program, the home must give a 30 day notice of related rate and resident agreement changes to all affected residents of the home and enter

into the standard agreement with the State as a Medicaid provider in the program.

- 4.3.e A home must give 90 days' advance notice to the licensing agency and to its residents of a decision to withdraw from the ACCS program in the time and manner required for closure of a home pursuant to 5.3(h) of these rules.
- 4.3.f The licensing agency will investigate and take action regarding any omissions, failures, and complaints associated with a home's performance in the ACCS program pursuant to relevant regulatory requirements.

#### **4.4 Denial of Application**

- 4.4.a An applicant may be denied a license for anyone of the following:
  - (1) Conviction of a crime, in Vermont or elsewhere, for conduct which demonstrates unfitness to operate a home;
  - (2) Substantiated complaint of abuse, neglect or exploitation;
  - (3) Conviction, in Vermont or elsewhere, for an offense related to bodily injury, theft or misuse of funds or property;
  - (4) Conduct, in Vermont or elsewhere, inimical to the public health, welfare and safety;
  - (5) Financial incapacity, including capitalization, to provide adequate care and services;
  - (6) An act or omission which would constitute a violation of any of these rules or would strongly suggest that the applicant will be unlikely to comply with these rules; or
  - (7) The proposed facility does not meet the definition or intent of the type of licensure requested.
- 4.4.b When an applicant is denied for any of the aforementioned reasons, the licensing agency may determine the applicant has overcome the prohibition if presented with evidence of expungement or suitability sufficient to ensure the safety of residents.
- 4.4.c Failure to provide complete, truthful and accurate information within the required time during the application or re-application process will be grounds for automatic denial or revocation of a license.

#### **4.5 Re-application**

- 4.5.a A completed application form, including all required information in full, must be returned to the licensing agency not less than forty-five (45) days before the expiration date. Upon receipt of a properly completed application, a license will be renewed assuming all other conditions for licensure are met.
- 4.5.b Licenses will be issued for a period of one (1) year, unless the licensing agency determines that a home's lack of compliance with these rules indicates the home should be given a license for a shorter period of time.
- 4.5.c Requests for continued participation in the ACCS Medicaid program must be submitted on an annual basis with the license re-application.

#### **4.6 Expiration**

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

until the agency completes the renewal process.

#### **4.7 *Change in Licensed Capacity***

- 4.7.a A home must not provide care to more residents than the capacity for which it is licensed. Requests for a change in licensed capacity must be made in writing to the licensing agency. A proper staffing pattern to cover an increase in capacity must be submitted when requested.
- 4.7.b A home may provide other related services, such as acting as a senior meals program meal site or adult day care, provided the home:
- (1) Has adequate space, staff, and equipment to appropriately provide the service;
  - (2) Has fully informed residents on admission, or upon addition of a new service, about the additional services;
  - (3) Ensures residents of the home will not be inconvenienced by the service; and
  - (4) Has received approval from the licensing agency in advance.
- 4.7.c The offered service must meet accepted standards of practice and general requirements for that service. For adult day care, the provider must meet the standards for adult day care adopted by the Department of Disabilities, Aging, and Independent Living. For meal sites, the provider must meet the standards adopted for the senior meals program through the Department of Disabilities, Aging, and Independent Living.
- 4.7.d If a home becomes a meal site, the home cannot charge a resident of the home for a meal at the meal site unless that meal is in addition to the meal the home is required to provide to the resident.

#### **4.8 *Temporary License***

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

#### **4.9 *Change in Status***

- 4.9.a When a change of ownership, licensee, or location is planned, the licensee or prospective licensee is required to file a new application for license at least ninety (90) days prior to the proposed date of the change.
- 4.9.b The new licensee must provide each resident with a new uniform consumer disclosure and a new written admission agreement that describes all rates and charges as set forth in 5.2.a and 5.2.b.
- 4.9.c The licensee must give each resident and the licensing agency a written ninety (90) day notice whenever its services, rates, retention policies or physical plant will change in such a way as to significantly enhance or significantly restrict the potential for residents to remain in the residence, taking into account the specific facility population at the time of change.

#### **4.10 *Separate License***

A separate license is required for each home that is owned and operated by the same management and/or owner(s).

#### **4.11 *Transfer Prohibited***

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

#### **4.12 *License Certificate***

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

#### **4.13 *Responsibility and Authority***

4.13.a Each home must be organized and administered under one authority, which may be an individual, corporation, partnership, association, state, subdivision or agency of the state, or any other entity.

4.13.b Regardless of the type of ownership or control of the home, there must be appointed a duly authorized qualified manager, however named, who will be in charge of the daily management and business affairs of the home, fully authorized and empowered to carry out the provisions of these rules, and charged with the responsibility of doing so.

(1) The manager of the home must be present in the home an average of 32 hours or more per week. The 32 hours includes time providing services, such as transporting, or attendance at educational seminars. Vacations and sick time will be taken into account for the 32-hour requirement.

(2) In the event of extended absences by the manager, an interim manager must be appointed.

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

4.13.d The qualifications for the manager of a home, who is hired on or after the effective date of these rules, are, at a minimum:

(1) At least a high school diploma or equivalent AND completion of a State approved certification course AND

(2) One of the following:

- i. At least an associates degree in the area of human services AND two (2) years of administrative experience in adult residential care; or
- ii. Four (4) years of general experience in residential care, including two (2) years in management, supervisory or administrative capacity; or
- iii. A current Vermont license as a nurse or nursing home administrator; or

- iv. Other professional qualifications and experience related to the provision of healthcare services or management of healthcare facilities including, but not limited to, a licensed or certified social worker. For this qualification, approval of the specific qualifications by the licensing agency is required.
- 4.13.e At any time after the licensing agency issues a notice of intent to impose sanctions, the owner(s) and the licensee must be readily available to the licensing agency and the manager of the home upon request and must respond to requests for communication and/or information within ten (10) calendar days. This could include financial information, operating agreements, or information about care and services.

#### **4.14 Survey/Investigation**

- 4.14.a The licensing agency will inspect a home annually and may inspect a home any other time it considers an inspection necessary to determine if a home is in compliance with these rules.
- (1) Authorized staff of the licensing agency must have access to the home at all times, with or without notice.
  - (2) The living quarters of the manager of a home may be subject to inspection only where the inspector has reason to believe the licensed capacity of the home has been exceeded and only for the purpose of determining if such a violation exists. The inspector will permit the manager to accompany them on such an inspection.
  - (3) If an authorized inspector is refused access to a home or the living quarters of the manager, the licensing agency may, pursuant to 18 V.S.A. §121, seek a search warrant authorizing the inspection of such premises. Failure to permit access upon request also will constitute a violation of the rules subject to the penalties set forth in section 4.15 below.
  - (4) If, as a result of an investigation or survey, the licensing agency determines that a home is unlicensed and meets the definition of a residential care home, written notice of the violation will be prepared pursuant to 33 V.S.A. §7110(a) and §4.15 of these rules.
- 4.14.b The licensing agency will investigate whenever it has reason to believe a violation of the law or rules has occurred. Investigations may be conducted by the licensing agency or its agents and may be conducted at any place or include any person the licensing agency believes possesses information relevant to its regulatory responsibility and authority.
- 4.14.c After each inspection, survey or investigation, an exit conference will be held with the manager or designee. The exit conference will include an oral summary of the licensing agency's findings and, if regulatory violations were found, notice that the home must develop and submit an acceptable plan of correction. Residents who wish to participate in the exit conference have the right to do so. Representatives of the Office of the State Long Term Care Ombudsman may also attend the exit conference.
- 4.14.d A written report will be submitted to the licensee at the conclusion of an investigation. The report will contain the results of the investigation, any conclusions reached and any final determinations made by the licensing agency.
- 4.14.e The licensing agency may, within the limits of the resources available to it, provide

technical assistance to the home to enable it to comply with the law and the rules. The licensing agency will respond to reasonable requests for clarification of the rules.

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

#### **4.15 *Violations: Notice Procedure***

- 4.15.a If, as a result of survey or investigation, the licensing agency finds a violation of a law or regulation, it will provide a written notice of violation to the home within ten (10) business days. The notice will include the following:
- (1) A description of each condition that constitutes violation;
  - (2) Each rule or statutory provision alleged to have been violated;
  - (3) The scope and severity of each violation, pursuant to the grid set forth in Appendix A;
  - (4) The date by which the home must return a plan of correction for the alleged violations;
  - (5) The date by which each violation must be corrected;
  - (6) Sanctions the licensing agency may impose for failure to correct the violation or failure to provide proof of correction by the date specified;
  - (7) The right to apply for a variance as provided for in Section III of these rules;
  - (8) The right to an informal review by the licensing agency; and
  - (9) The right to appeal the licensing agency determination of violation, with said appeal being made to the Commissioner within fifteen (15) days of the mailing of the notice of violation.
- 4.15.b The licensing agency will provide a copy of the survey results and any enforcement action as defined in 4.16 to the Office of the State Long Term Care Ombudsman.
- 4.15.c If the licensee fails either to return an acceptable plan of corrective action or to correct any violation in accordance with the notice of violation, the licensing agency will provide written notice to the licensee of its intention to impose specific sanctions, and the right of the licensee to appeal.
- 4.15.d The licensing agency will mail its decision to the licensee within ten (10) business days of the conclusion of the review or, if no review was requested, within twenty-five (25) days of the mailing of the notice of proposed sanctions. The written notice will include the licensee's right to appeal the decision to the Commissioner within fifteen (15) days of the mailing of the decision by the licensing agency.
- 4.15.e Nothing in these rules precludes the licensing agency from taking immediate enforcement action to eliminate a condition which can reasonably be expected to cause death or serious physical or mental harm to residents or staff.

- (1) If the licensing agency takes immediate enforcement action, it will explain the actions and the reasons for it in the notice of violation.
- (2) At the time immediate enforcement action is proposed, the licensee will be given an opportunity to request an appeal to the Commissioner.
- (3) If immediate enforcement action is taken, the licensee also will be informed of the right to appeal the Commissioner's decision to the Human Services Board.

#### **4.16 Enforcement**

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

- 4.16.a Administrative penalties against a home for failure to correct a violation or failure to comply with a plan of corrective action for such violation as follows:
  - (1) Up to \$5.00 per resident or \$50.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily for the administrative purposes of the licensing agency;
  - (2) Up to \$8.00 per resident or \$80.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily to protect the welfare or the rights of residents;
  - (3) Up to \$10.00 per resident or \$100.00, whichever is greater, for each day a violation remains uncorrected if the rule or provision violated was adopted primarily to protect the health or safety of residents.
  - (4) For purposes of imposing administrative penalties under this subsection, a violation will be deemed to have first occurred as of the date of the notice of violation.
- 4.16.b Suspension, revocation, modification or refusal to renew a license upon any of the following grounds:
  - (1) Violation by the licensee of any of the provisions of the law or rules;
  - (2) Conviction of a crime for conduct which demonstrates that the licensee or the principal owner is unfit to operate a home;
  - (3) Conduct inimical to the public health, welfare and safety of the people of the State of Vermont in the maintenance and operation of the premises for which a license is issued;
  - (4) Financial incapacity of the licensee to provide adequate care and services;
  - (5) Failure to comply with a final decision or action of the licensing agency; or
  - (6) Misrepresentation by the home of its licensure status or capacity in its advertising, promotional materials, brochures, or other materials.
- 4.16.c Appointment of a temporary manager, requiring a directed plan of correction, suspension of admissions to a home, or transfer of residents from a home to an alternative placement, for a violation which may directly impair the health, safety or rights of residents, or for operating without a license. Residents subject to transfer must have the procedural rights provided in Section 6.14.
- 4.16.d The licensing agency, the attorney general, or a resident may bring an action for

injunctive relief against a home in accordance with the Rules of Civil Procedure to enjoin any act or omission which constitutes a violation of the law or regulation. Notice of such action will be given to the Office of the State Long Term Care Ombudsman.

- 4.16.e The licensing agency, the attorney general, or a resident may bring an action in accordance with the Rules of Civil Procedure for appointment of a receiver for a home, if there are grounds to support suspension, revocation, modification or refusal to renew the home's license and alternative placements for the residents are not readily available. Notice of such action will be given to the Office of the State Long Term Care Ombudsman.
- 4.16.f The licensing agency may enforce a final order by filing a civil action in the superior court in the county in which the home is located, or in Washington Superior Court.
- 4.16.g The remedies provided for violations of the law or rules are cumulative.
- 4.16.h If closure of the facility is the outcome of any of the enforcement actions listed above, the licensee must ensure that all residents are discharged or transferred in a safe and orderly manner. Failure to do so may result in additional enforcement action and penalties.

#### **4.17 Identification of Unlicensed Homes**

With regard to residential care homes operating without a license, but required by law to be licensed, the following will apply:

- 4.17.a No physician, surgeon, osteopath, chiropractor, physician assistant (licensed, certified or registered under the provisions of Title 26), resident physician, intern, hospital administrator in any hospital in this state, registered nurse, licensed practical nurse, medical examiner, psychologist, mental health professional, social worker, probation officer, police officer, nursing home administrator or employee, or owner, manager, or employee of a home may knowingly place, refer or recommend placement of a person to such a home if that home is operating without a license.
- 4.17.b Any individual listed in 4.17.a who is licensed or certified by the State of Vermont or who is employed by the state or a municipality and who knows or has reason to believe that a home is operating without the license required under this chapter must report the home and address of the home to the licensing agency.
- 4.17.c Violation of the above sections may result in a criminal penalty of up to \$500 and/or a prison sentence of up to six months pursuant to 18 V.S.A. §2013.
- 4.17.d The licensing agency will investigate any report filed by an individual listed above.
- 4.17.e The licensing agency will investigate any report filed by any person other than one listed in 4.17 a, unless it reasonably believes that the complaint is without merit.

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

### **5.1 Eligibility**

- 5.1.a The licensee must not accept or retain as a resident any individual who meets level of care eligibility for nursing home admission, as described in the Division's *Level of Care Criteria Guidelines*, or who otherwise has care needs which exceed what the home is able to safely and appropriately provide, without first having met the requirements of Section 12, below, and having obtained a variance from the licensing agency.



- 5.1.b A person with a serious, acute illness requiring the medical, surgical or nursing care of a general or special hospital must not be admitted to or retained as a resident in a residential care home.
- 5.1.c A person under eighteen (18) years of age must not be admitted to a residential care home except by permission of the licensing agency.
- 5.1.d The licensee must ensure that all marketing and advertising materials accurately reflect the level at which the home is licensed and the care and services available and provided at the home.

## **5.2 *Uniform Consumer Disclosure and Admission Agreements***

- 5.2.a The licensee upon initial licensure must state the services it can and will provide, the public programs or benefits that it accepts or delivers, the policies that affect a resident's ability to remain in the home, and any other relevant information.
  - (1) The uniform consumer disclosure must be completed on a form provided by the licensing agency and must be kept on file by the licensee.
  - (2) The uniform consumer disclosure must include a statement describing the daily, weekly or monthly rate to be charged, a description of the services that are covered in the rate and all other applicable financial issues.
  - (3) The uniform consumer disclosure must include a statement that rates are subject to change, including rate changes due to increased care needs, and describe the situations in which the changes(s) could occur.
  - (4) The uniform consumer disclosure must be provided:
    - i. to residents prior to or at admission and at any time it is changed or is requested by the resident; and
    - ii. to the public upon request.
  - (5) The availability of a uniform consumer disclosure must be noted prominently in all marketing brochures and written materials.
- 5.2.b Prior to or at the time of admission, each resident, and the resident's legal representative if any, must be provided with a written admission agreement which describes rate or rates to be charged, a description of the services that are covered in each rate, and all other applicable financial issues.
  - (1) The admission agreement must specify at least how the following services will be provided, and what additional charges there will be, if any, for such services: all personal care services; nursing services; medication management; laundry; transportation; toiletries; and any additional services provided under ACCS or a Medicaid Waiver program. The licensee must comply with the terms in the admission agreement. Any changes to the agreement must be in writing.
  - (2) If applicable, the agreement must specify the amount and purpose of any deposit.
  - (3) The agreement must specify the resident's transfer and discharge rights, including provisions for refunds, and must include a description of the home's personal needs allowance policy.
  - (4) The agreement must include an explanation of the home's policy regarding discharge when a resident's financial status changes from privately paying to paying with public benefits.
  - (5) The agreement must describe the home's policy regarding holding a resident's bed

when a resident is away from the home for medical or other reasons.

- 5.2.c In addition to general resident agreement requirements, agreements for all ACCS participants must include:
- (1) The ACCS services, the specific room and board rate, the amount of personal needs allowance and the provider's agreement to accept room and board and Medicaid as sole payment.
  - (2) No home may require that a resident purchase optional services as a condition of serving the resident in the ACCS program. Medicaid rules prohibit homes from requiring deposits for ACCS covered services.
  - (3) The admission agreement must inform the resident whether the home will accept SSI or ACCS payments and allow a privately-paying resident to continue residing in the home when the resident is no longer able to continue privately paying the home's periodic rate. Alternatively, the admission agreement must inform the resident that the home is not required to accept SSI or ACCS payments, that the home reserves the right to make this decision on a case-by-case basis, and that the resident may be transferred or discharged from the home in the event that the resident's financial status changes and the resident is no longer able to continue privately paying the home's periodic rate.
  - (4) If the home agrees to accept SSI or ACCS payments and allows the resident to remain in the home when the resident's financial status changes, the home must provide the resident with a new admission agreement as provided to all ACCS participants.
  - (5) If a resident loses SSI or ACCS benefits and the loss of such benefits will result in discharge from the home, the home must provide a thirty (30) day notice prior to discharge or transfer as required in 5.3.a.
  - (6) If an ACCS resident resides in a home under a variance, the home may accept one of the following amounts in addition to the resident's required payment and the ACCS daily rate:
    - i. A payment from a Medicaid Waiver program, if applicable; or
    - ii. A payment from another source. In such cases, the amount accepted must be clearly stated in the resident agreement, and the home must state whether the resident will be eligible to remain in the home at the ACCS rate alone if the resident no longer meets the applicable guideline for a higher level of care.
  - (7) A home certified to provide assistive community care services (ACCS) must designate a staff person responsible for case management. Residents must be informed upon admission, and any time there is a change, of the name of the staff person responsible for case management.
- 5.2.d A home that has specialized programs or care units such as dementia care must include a written statement of philosophy and mission and a description of how the home can meet the specialized needs of residents in its uniform consumer disclosure form and in its admission agreement.
- 5.2.e On admission, the home must also determine if the resident has any form of advance directive or DNR/COLST and explain the resident's right under state law to formulate, or

not to formulate, an advance directive or DNR/COLST.

- 5.2.f In general, any change of rate or services must be preceded by a ninety (90) day written notice to the resident and the resident's legal representative, if any. Annual Medicaid room and board rate changes may be implemented after a thirty (30) day written notice to residents and their legal representatives. When a home plans to increase a resident's rate due to the resident's increased care needs, at the time the notice is given the home must offer the resident and the resident's representatives a care plan meeting to discuss the proposed increase, the increased care the home will provide to the resident, and the reasons the home believes the increased care is needed.
- 5.2.g The home must provide each resident with information regarding how to contact the Office of the Long Term Care Ombudsman, Disability Rights Vermont, and the Vermont Legal Aid's Elder Law Project.
- 5.2.h On admission each resident must be accompanied by a statement from a licensed health care provider, which must include: medical diagnosis, including psychiatric diagnosis if applicable, and any additional history that is pertinent to the care of the resident.

### **5.3 *Discharge and Transfer Requirements***

#### **5.3.a Involuntary Discharge or Transfer of Residents**

- (1) An involuntary discharge of a resident is the removal of the resident from a home when the resident or the resident's legal representative has not requested or consented in advance to the removal. A transfer is the removal of the resident from the room the resident currently occupies to another room in the home or to another facility with an anticipated return to the home. An involuntary discharge or transfer may occur only when:
  - i. The resident's care needs exceed those which the home is licensed or approved through a variance to provide; or
  - ii. The home is unable to meet the resident's assessed needs; or
  - iii. The resident presents a threat to the resident's self or the welfare of other residents or staff; or
  - iv. The discharge or transfer is ordered by a court; or
  - v. The resident has failed to pay monthly charges for room, board and care in accordance with the admission agreement.
- (2) In the case of an involuntary discharge or transfer, the manager must:
  - i. Notify the resident, and if known, a legal representative of the resident, of the discharge or transfer and the specific reasons for the move in writing and in a language and manner the resident understands at least 72 hours before a transfer within the home and thirty (30) days before discharge from the home. If the resident requests assistance, the notice must be sent to the Office of the Long-Term Care Ombudsman and Disability Rights Vermont. With the consent of the resident, a family member also may be notified of the pending discharge or transfer.
  - ii. Include a statement in any legible font, size 18, that the resident has the right to

appeal the home's decision to transfer or discharge with the appropriate information regarding how to do so.

- iii. Include a statement in the written notice that the resident may remain in the room, unit or home during the appeal.
  - iv. Include the name, address and telephone number of the Office of the State Long Term Care Ombudsman.
  - v. Place a copy of the notice in the resident's clinical record.
  - vi. Ensure that the facility or location to which the resident will be discharged or transferred is appropriate to meet the assessed needs of the resident. To determine whether the new facility or location is appropriate, the manager must consider the assessed needs of the resident and the ability of the proposed facility to meet those needs. The manager must take into consideration the resident's wishes, the resident representative's input, when appropriate, and the proximity of the proposed facility to the current home.
- (3) A resident has the right to appeal the decision by the home to discharge or transfer. The process for appeal is as follows:
- i. To appeal the decision to transfer or discharge, the resident or a resident representative must notify the manager of the home or the director of the licensing agency. Upon receipt of an appeal, the manager must immediately notify the director of the licensing agency.
  - ii. The request to appeal the decision may be oral or written and must be made within 10 business days of the receipt of the notice by the resident.
  - iii. Both the home and the resident must provide all the materials deemed relevant to the decision to transfer or discharge to the director of the licensing agency as soon as the notice of appeal is filed. The resident may submit orally if unable to submit in writing. Copies of all materials submitted to the licensing agency will be available to the resident upon request.
  - iv. The director of the licensing agency will render a decision in writing within 10 business days of receipt of the notice of appeal.
  - v. The notice of decision from the director will be sent to the resident and to the home, will state that the decision may be appealed to the Commissioner, and will include information on how to do so.
  - vi. The resident or the home will have 10 business days after the receipt of the Commissioner's decision to file a request for an appeal with the Human Services Board by writing to the Board. The Human Services Board will conduct a de novo evidentiary hearing in accordance with 3 V.S.A. §3091.

#### 5.3.b Emergency Discharge or Transfer of Residents

- (1) An emergency transfer may only occur when one of the below criteria is met:
  - i. The resident's attending licensed health care provider documents in the resident's record that the transfer is an emergency measure necessary for the health and

- safety of the resident or other residents; or
    - ii. A natural disaster or emergency necessitates the evacuation of residents from the home; or
    - iii. The resident presents an immediate threat to the health or safety of self or others. In that case, the licensee must request permission from the licensing agency to transfer the resident immediately. Permission from the licensing agency is not necessary when the immediate threat requires intervention of the police, mental health crisis personnel, or emergency medical services. In such cases, the licensing agency must be notified on the next business day; or
    - iv. When ordered or permitted by a court.
  - (2) An emergency discharge may occur only in extreme circumstances, as it eliminates the residents' right to remain in their home during discharge planning and any appeals. An emergency discharge may only be made with less than thirty (30) days' notice under one of the following circumstances:
    - i. The resident's attending licensed health care provider documents in the resident's record that the discharge is an emergency measure necessary for the health and safety of the resident or other residents; or
    - ii. A natural disaster or emergency necessitates the evacuation of residents from the home and prevents timely return; or
    - iii. The resident presents an immediate threat to the health or safety of self or others. In that case, the licensee must request permission from the licensing agency to discharge the resident.
    - iv. When ordered or permitted by a court.
  - (3) The home must issue a written notice of emergency discharge to the resident as soon as a determination has been made. The notice must include the notice requirements set forth in 5.3.a (2), above, with the exception of 5.3.a.(2) iii.
  - (4) If a resident is transferred to a hospital for treatment, that transfer will not constitute an emergency discharge. In order to refuse to re-admit a resident after transfer to a hospital (which then becomes a discharge if not allowed to return to their home), the home must meet the requirements for an emergency discharge set forth above and must obtain approval from the licensing agency to refuse re-admission. If this occurs on a non-business day or during non-business hours, the approval request can be made on the next business day.
- 5.3.c Use of a negotiated risk agreement is not prohibited or required when considering the need for an involuntary discharge of a resident. If used, the negotiated risk agreement and process must comply with Assisted Living Residence rules, section 13.7.
- 5.3.d If the resident agrees to a discharge or transfer, the discharge or transfer may occur prior to the effective date of notice.
- 5.3.e A home must provide sufficient preparation and orientation to residents to ensure a safe and orderly transfer or discharge from the home.
- 5.3.f A home may not initiate an involuntary discharge of a resident whose care is provided

and paid for under the ACCS program because of voluntary temporary, leaves from the home.

- 5.3.g A home is responsible for any charges associated with disconnecting, relocating or reconnecting telephones, cable television, air-conditioning or other similar costs resulting from a home's decision to transfer the resident or relocate the resident's room.
- 5.3.h A licensee who intends to discontinue all or part of the operation, or to change the admission or retention policy, ownership, or location of the home in such a way as to necessitate the discharge or transfer of residents, must notify the licensing agency, the Office of the State Long Term Care Ombudsman, and residents at least ninety (90) days prior to the proposed date of change. The licensee is responsible for ensuring that all residents are discharged or transferred in a safe and orderly manner. When such change in status does not necessitate the discharge or transfer of residents, the licensee must give the licensing agency and residents at least thirty (30) days prior written notice.
- 5.3.i The home may include language in its admission agreement requiring residents to provide thirty (30) days' notice when the resident intends to voluntarily leave the home. The death of a resident will not be considered voluntarily leaving the home and will not require prior notice.

#### **5.4 Refunds**

- 5.4.a When a resident is discharged, the resident must receive a refund, within thirty (30) days of discharge, for any funds paid in advance for each day care was not provided. In the case of a discharge to a hospital or other temporary placement, the effective date for this provision will be the day the home is notified the resident will not be returning. For the purposes of providing refunds, "day of discharge" will be considered the day the resident's room is empty of the resident's belongings, if those belongings are too large or difficult for the home to store temporarily. The facility must temporarily store small items such as clothing and other personal items if necessary.
- 5.4.b The home must document in the resident's record the date of receiving notification that the resident would not return, and from whom notice was received.
- 5.4.c A home may not seek to recover for lost income from ACCS residents for care on days that are not days of service. A home may not require, induce or accept payment for care for residents in the ACCS program for days of residence that are not days of service.
- 5.4.d In the case of ACCS residents and homes, the refund must be based on any funds paid in advance by the resident for care and services. A home must not offset all or any part of the refund by charging the resident for covered or optional services for any day that does not meet the definition of a day of service.

#### **5.5 General Care**

- 5.5.a Upon a resident's admission to a home, necessary services must be provided or arranged to meet the resident's personal, psychosocial, nursing and medical care needs. Based on the comprehensive assessment of the resident, the home must ensure that each resident receives treatment and care in accordance with professional standards of practice, the resident's comprehensive, person-centered care plan, and the resident's choices.
- 5.5.b Staff must provide care that respects each resident's dignity and each resident's

accomplishments and abilities. Residents must be encouraged to participate in their own care plan development and activities of daily living. Families must be encouraged to participate in care and care planning according to their ability and interest, provided that the home first has obtained the permission of the resident.

- 5.5.c Each resident's medication, treatment, and dietary services must be consistent with the licensed health care provider's order, the written plan of care, and the resident's preferences.
- 5.5.d A home must provide each resident with adequate supervision and must facilitate obtaining assistive devices sufficient to prevent accidents, and/or to mitigate risk of injury due to accidents.

### **5.6 *Special Care Units***

- 5.6.a The home must obtain approval from the licensing agency prior to establishing and operating a special care unit. Approval will be based on a demonstration by the home that the unit will provide specialized services to a specific population.
- 5.6.b A request for approval must include all of the following:
  - (1) A statement outlining the philosophy, purpose and scope of services to be provided;
  - (2) A definition of the categories of residents to be served;
  - (3) A description of the organizational structure of the unit consistent with the unit's philosophy, purpose and scope of services;
  - (4) A description and identification of the physical environment, including any secured areas or special provisions for safety;
  - (5) The criteria for admission, continued stay and discharge from the unit; and
  - (6) A specific description of unit staffing, which must include:
    - i. Staff qualifications;
    - ii. Staffing levels or ratios for each shift;
    - iii. Orientation content and duration;
    - iv. In-service education and specialized training; and
    - v. For dementia or memory care-type units, all staff that regularly interact with residents in the facility and/or programs, must receive specialized training that includes, at a minimum: understanding dementia; communication strategies; person-centered care; addressing challenging behaviors; meaningful activities and social engagement for residents; and the role of the environment.
      - (A) Such training must consist of a minimum of eight (8) hours, total, prior to staff independently working with residents; and
      - (B) There must be no fewer than two (2) hours of dementia-specific training per year;
- 5.6.c A home that has received approval to operate a special care unit must comply with the specifications contained in the request for approval. Failure of the home to provide the services, staffing, training and physical environment as outlined in the request for approval will be the basis for the imposition of sanctions up to and including closure of

the unit.

- 5.6.d The requirements of sections 5.2 and 5.3 above apply to all residential care home residents, including those in special care units.
- 5.6.e A home must not state that it operates a special care unit verbally, or in its title, brochures, uniform consumer disclosure, admission agreement or other written or promotional materials unless the home has obtained and maintains a valid license to operate a special care unit issued by the Department of Disabilities, Aging and Independent Living.
- 5.6.f A home must make all special care unit proposals and training curricula available for review by residents, legal guardians and family members, and the State Long Term Care Ombudsman's Office. The home must post a notice about the availability of the proposal and the training curricula in a prominent public place within the special care unit(s).

### **5.7 *Assessment***

- 5.7.a A home must evaluate any prospective resident's functional, cognitive, and mental and physical health status before the resident takes occupancy of the home. The purpose of a pre-admission evaluation is to determine whether the prospective resident is eligible for Level III or IV care and whether needed services are available.
- 5.7.b An assessment must be completed for each resident within fourteen (14) days after admission, consistent with the diagnosis and orders from the licensed health care provider, using an assessment instrument provided by the licensing agency. If the home is licensed as a Level IV and nursing overview is not provided at the residential care home, the assessment form may be completed by the Manager. If the home is licensed as a Level III residential care home or assisted living residence, for residents requiring nursing overview, medication administration or nursing care, the assessment must be completed by a registered nurse. The resident's abilities regarding medication management must be assessed within 24 hours after admission, and nursing delegation must be implemented, if necessary.
- 5.7.c Each resident must also be reassessed annually and at any point in which there is a significant change in the resident's physical or mental condition, as defined in the instructional guide with the assessment instrument, available on the DLP website.

### **5.8 *Licensed Health Care Provider Services***

- 5.8.a All residents must be under the continuing general care of a licensed health care provider of their choosing, and must receive assistance, if needed, in scheduling and arranging transportation to attend medical appointments.
- 5.8.b A resident has the right to refuse all medical care. In such cases, the home must assess its ability to properly care for the resident and document the refusal and the reasons for it in the resident's record.
- 5.8.c Any refusal of medical care and the reasons for the refusal must be documented in the resident's record. If the resident has an attending licensed health care provider, the licensed provider must be notified about the refusal of care.
- 5.8.d All orders from a licensed health care provider obtained via telephone must be signed (may be electronically signed) by the licensed health care provider within fifteen (15)



days of the date the order was given. Unlicensed staff may not take telephone orders; all telephone orders must be obtained by a licensed nurse.

### **5.9 Nursing Services**

- 5.9.a The home must have sufficient nursing staff 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.
- 5.9.b The following services are not permitted in a residential care home except under a variance granted by the licensing agency: intravenous therapy; ventilators; daily catheter irrigation; feeding tubes; care of stage III or IV pressure ulcers; or suctioning. Sterile dressings are permitted without a variance, but only if the service is provided by a registered nurse or a licensed practical nurse.
- 5.9.c For each resident requiring nursing overview, administration of medication, or nursing care, the registered nurse must:
  - (1) Complete an assessment of the resident in accordance with section 5.7;
  - (2) Develop a person-centered written plan of care within 14 days after admission, in accordance with the nursing process and professional standards of practice, for each resident that is based on abilities and needs as identified in the resident assessment. The resident, and if the resident chooses, resident representatives such as family or close supports, must be invited and allowed to participate in care planning meetings. A plan of care must describe the care and services necessary to assist the resident to maintain independence and well-being, and must be revised as the resident's abilities and needs change;
  - (3) Ensure the written plan of care is implemented by staff;
  - (4) Provide instruction and oversight to all direct care personnel regarding each resident's health care needs and nutritional needs. Delegate nursing tasks as appropriate, following the Board of Nursing's recommended practices, with adequate documentation of delegation;
  - (5) Maintain a current list for review by staff and physician of all residents' medications. The list must include: resident's name; medications; date medication ordered; dosage and frequency of administration; and likely side effects to monitor;
  - (6) Ensure that residents' medications are reviewed periodically and that all resident medications have either a supporting medical diagnosis or problem;
  - (7) Maintain a current list of all treatments for each resident that must include: the name, date treatment ordered, treatment and frequency prescribed and documentation to reflect that treatment was carried out;
  - (8) Ensure that symptoms or signs of illness or accident are recorded at the time of occurrence, along with action taken and proper documentation of ongoing follow-up;
  - (9) Ensure that the resident's record documents any changes in a resident's condition as well as the nursing actions taken;
  - (10) Ensure that the resident, licensed health care provider, and, if applicable, the

resident's legal representative, are notified immediately when there is an accident or incident involving the resident that results in injury, a significant change in the resident's condition, or a need to alter treatment significantly.

- (11) Review all therapeutic diets and food allergies with dietary staff as needed to assure nutritional standards are met and are consistent with orders of the licensed health care provider and the recommendations of other relevant health professionals, such as the registered dietician and the speech language pathologist;
- (12) Monitor stability of each resident's weight;
- (13) Ensure that direct care staff follow current professional standards of practice and current infection control standards during provision of services;
- (14) Implement assistive therapy as necessary to maintain or improve the resident's functional status, with consultation from a licensed professional as needed; and
- (15) Assume responsibility for staff performance in the administration of or assistance with resident medication in accordance with the home's policies.

5.9.d The Manager must ensure unlicensed staff only perform nursing tasks and medication administration under the delegation of a registered nurse currently employed by the home. Upon a change in the delegating registered nurse, the incoming registered nurse must follow professional standards of nursing practice regarding delegation of nursing tasks to unlicensed staff.

5.9.e Residents of Level III or Level IV may receive home health services on a resident-specific basis to provide care the home cannot readily provide, including skilled nursing, speech therapy, physical therapy and occupational therapy on an intermittent basis (less than three times per week) or more intensively for short term (up to seven days a week for no more than thirty (30) days) to the extent agreed upon by the service provider and the resident if all other provisions of these rules are met.

- (1) Level III homes may utilize home health agency services to provide nursing overview or medication management provided such services are provided on a contractual basis to the home and the cost for such a service is not charged to Medicare or the resident. Level IV homes may utilize home health agency services to provide nursing overview or medication management on a resident-specific basis without a special contractual arrangement.
- (2) If a resident requires skilled nursing services from a home health agency because the home cannot provide the services and the services will continue for more than sixty (60) days, the home must request a variance in writing from the licensing agency to retain the resident.
- (3) Home health agencies may not provide personal care services, such as bathing, for residents in residential care homes except with the permission of the licensing agency. Personal care by home health agencies associated with hospice care is permitted as long as the home meets all other requirements.

### **5.10 Medication Management**

5.10 Level III homes must provide medication management only under the oversight of a registered nurse. Level IV homes must determine whether the home is capable of and

willing to provide assistance with medications and/or administration of medications as provided under these rules. Residents must be fully informed of the home's policy regarding medication management prior to admission, both in the uniform consumer disclosure and in the admission agreement.

- 5.10.a Each home must have written policies and procedures describing the home's medication management practices. The policies must cover at least the following:
- (1) Who provides the professional nursing delegation if the home administers medications to residents unable to self-administer and how the process of delegation is to be carried out in the home.
  - (2) Qualifications of the staff who will be managing medications or administering medications and the home's process for nursing oversight of the staff.
  - (3) How medications will be obtained for residents, including choices of pharmacies.
  - (4) Procedures for documentation of medication administration.
  - (5) Procedures for disposing of outdated or unused medication, including designation of a person or persons with responsibility for disposal.
  - (6) Procedures for monitoring side effects of psychoactive medications.
  - (7) Procedures for assessing and ensuring that residents with a diagnosis of dementia are not chemically restrained by the use of psychoactive medications, when prescribed to affect or alter behavioral symptoms.
  - (8) Procedures for reporting and tracking medication errors.
  - (9) Procedures setting forth how new medication and/or treatment orders will be obtained and implemented in the home.
  - (10) Procedures to ensure that registered nurse delegation has been completed prior to unlicensed staff administering any new medication to any resident.
  - (11) Procedures for obtaining, storing, administering, documenting, counting and disposing of controlled substances.
- 5.10.b The manager of the home is responsible for ensuring that all medications are handled according to the home's policies and that designated staff are fully trained in the policies and procedures.
- 5.10.c Staff must not administer any medication, prescription or over-the-counter medications for which there is not a written, signed order from a licensed health care provider and a supporting diagnosis or problem statement in the resident's record.
- 5.10.d If a resident requires medication administration, unlicensed staff may administer medications under the following conditions:
- (1) A registered nurse must conduct an assessment consistent with the licensed health care provider's diagnosis and orders of the resident's care needs as required in section 5.7.c.
  - (2) A registered nurse must delegate the responsibility for the administration of specific medications to designated staff for designated residents. Delegation must be resident-specific for each medication.

- (3) The registered nurse must accept responsibility for the proper administration of medications, and is responsible for:
  - i. Teaching designated staff proper techniques for medication administration and providing appropriate information about the resident's condition, relevant medications, and potential side effects;
  - ii. Establishing a process for routine communication with designated staff about the resident's condition and the effect of medications, as well as changes in medications;
  - iii. Assessing the resident's condition and the need for any changes in medications; and
  - iv. Monitoring and evaluating the designated staff performance in carrying out the nurse's instructions regarding medication administration and documentation.
  - v. Ensuring that all applicable staff are trained and delegated before the staff are permitted to administer any newly prescribed medication to any resident.
- (4) All medications must be administered by the person who prepared the doses unless the registered nurse responsible for delegation approves, in writing, an alternative method of preparation and administration of the medications.
- (5) Staff other than a nurse may administer PRN psychoactive medications only when the home has a written plan for the use of the PRN medication which: describes the specific behaviors the medication is intended to correct or address; identifies any known triggers for the behaviors; specifies the circumstances that indicate the use of the medication; educates the staff about what desired effects or undesired side effects the staff must monitor for; and documents the time of, reason for and specific results of the medication use.
  - i. Unlicensed staff must not administer anti-psychotic medications on a PRN or "as needed" basis, unless the delegating registered nurse gives verbal permission prior to administration for each dose, which must be documented.
  - ii. Prior to PRN psychoactive medications being administered to a resident who is not capable of self-administration, non-pharmacological interventions must be attempted, which must be described in the resident's plan of care. The non-pharmacological interventions attempted prior to the administration of the PRN psychoactive medications must be documented in the resident's record.
- (6) Insulin and other injectable diabetes medications. Staff other than a nurse may administer injections only when:
  - i. The condition and medication regimen of the person with diabetes is considered stable by the registered nurse who is responsible for delegating the administration, which must be documented by the current delegating nurse in the medical record; and
  - ii. The designated staff to administer injections to the resident have received additional training in the administration of injections, including the use of various injection vehicles (syringes, insulin pens, etc.), and return demonstration, and the registered nurse has deemed them competent and documented that assessment; and

- iii. The registered nurse monitors the resident's condition regularly and is available when changes in condition or medication might occur.
- 5.10.e Staff responsible for assisting residents with medications, that does not qualify as medication administration, must receive training from a licensed nurse in the following areas before assisting with any medications:
- (1) The basis for determining "assistance" versus "administration".
  - (2) The resident's right to direct the resident's own care, including the right to refuse medications.
  - (3) Proper techniques for assisting with medications, including hand washing and checking the medication for the right resident, medication, dose, time, route.
  - (4) Monitoring for signs, symptoms and likely side effects of medications; procedure for documenting and notifying appropriate staff about concerns regarding side effects or medication interactions;
  - (5) The home's policies and procedures for assistance with medications.
- 5.10.f Residents who are capable of self-administration have the right to purchase and self-administer over-the-counter medications. However, the home must make every reasonable effort to be aware of such medications in order to monitor for and educate the residents about possible adverse reactions or interactions with other medications without violating the resident's rights to direct the resident's own care. If a resident's over-the-counter medications use poses a significant threat to the resident's health, staff must notify the licensed health care provider. The home's registered nurse must assess and document a resident's abilities regarding self-administration, for residents self-administering or being assisted with medications, at least annually and upon any significant change(s) in the resident's medications or condition.
- 5.10.g Homes must establish procedures for documentation sufficient to indicate to the licensed health care provider, registered nurse, manager or representatives of the licensing agency that the medication regimen as ordered is appropriate and effective. At a minimum, this must include:
- (1) Documentation that medications were administered as ordered;
  - (2) All instances of refusal of medications, including the reason why and the actions taken by the home;
  - (3) All PRN medications administered, including the date, time, reason for giving the medication, and the effect;
  - (4) A current list of who is administering medications to residents, including staff to whom a registered nurse has delegated administration; and
  - (5) For residents receiving psychoactive medications, a record of monitoring for side effects.
  - (6) All incidents of medication errors.
- 5.10.h All drugs, medicines and chemicals used in the home must be labeled in accordance with currently accepted professional standards of practice. Medication must be used only for the resident identified on the pharmacy label.
- (1) Resident medications that the home manages must be stored in locked compartments

- under proper temperature controls. Only authorized personnel must have access to the keys.
- (2) Medications requiring refrigeration must be stored in a refrigerator with a thermometer and maintain a temperature between 36 - 46 degrees Fahrenheit (F). If the home does not have a separate refrigerator for medications, those medications requiring refrigeration must be stored in a separate, locked container impervious to water and air and a temperature between 36 -40 degrees F must be maintained, to ensure both food safety and medication storage requirements are met.
  - (3) Residents who are capable of self-administration may choose to store their own medications provided that either they or the home is able to provide the resident with a secure storage space to prevent unauthorized access to the resident's medications. Whether or not the home is able to provide such a secured space must be included in the uniform consumer disclosure and in the admission agreement and must be explained to the resident on or before admission.
  - (4) Medications left after the death or discharge of a resident, or outdated medications, must be promptly disposed of in accordance with the home's policy and applicable standards of practice.
  - (5) Opioids and other controlled substances must be kept in a locked cabinet. Opioids must be accounted for each shift. Other controlled substances must be accounted for on at least a daily basis.

### **5.11 Staff Services**

- 5.11.a There must be a sufficient number of qualified personnel available at all times to provide necessary care, to maintain a safe and healthy environment, and to ensure prompt, appropriate action in cases of injury, illness, fire or other emergencies.
- 5.11.b The home must ensure that staff demonstrate competency in the skills and techniques they are expected to perform before providing any direct care to residents.
- 5.11.c The home must provide, or arrange for the provision of, at least twelve (12) hours of training upon hire and each year to each staff person providing direct care to residents. The manager may give credit towards the required 12 hours of training upon hire, for any formal training received in the twelve months preceding the date of hire, provided the home maintains documentation of the training and ensures competency in the subject matter. The training must include, but is not limited to, the following:
  - (1) Resident rights;
  - (2) Fire safety and emergency evacuation;
  - (3) Resident emergency response procedures, such as the Heimlich maneuver, accidents, police or ambulance contact and first aid;
  - (4) Policies and procedures regarding mandatory reports of abuse, neglect and exploitation;
  - (5) Respectful and effective interaction with residents;
  - (6) Infection control measures, including but not limited to, hand washing, handling of linens, maintaining clean environments, blood borne pathogens and universal precautions;

- (7) General supervision and care of residents;
  - (8) Communication strategies, person-centered care, challenging behaviors and understanding dementia;
  - (9) Recognition of and sensitivity to different cultures, belief systems, abilities, gender identities, sexual orientation; and
  - (10) Trauma-informed care.
- 5.11.d All training to meet the requirements of 5.11.c must be documented. Training in direct care skills by a home's licensed nurse may meet this requirement, provided the nurse documents the content and amount of training.
- 5.11.e The licensee must not have on staff a person who has had a substantiated charge of abuse, neglect or exploitation involving a child or an adult, nor a person who has been convicted of an offense for actions related to bodily injury, theft or misuse of funds or property, or other crimes inimical to the public welfare, in any jurisdiction, whether within or outside of the State of Vermont.
- (1) This prohibition applies to the manager of the home as well, regardless of whether the manager is the licensee or not.
  - (2) The licensee must take all reasonable steps to comply with this requirement, including, but not limited to, obtaining and checking personal and work references, contacting the Division of Licensing and Protection, the Department for Children and Families and the Department of Public Safety's Vermont Criminal Information Center (VCIC) or another national background check vendor to see if prospective employees are on the Vermont abuse registries or have a record of convictions in any state or territory.
  - (3) The home must require a resident as a condition of occupancy to conduct abuse registry (both adult and child) and criminal record checks for any privately hired personal care providers not employed by a licensed or certified agency.
  - (4) All background checks must be rechecked based on facility policy. The policy must include, at a minimum an annual re-check of Vermont criminal and abuse registries, and an annual re-check of all jurisdictions if a staff member has worked or lived in another state since the initial background check was completed and/or does so on a regular basis, and at any time any employee or caregiver notifies the home of a conviction or substantiation.
  - (5) If a prospective or current employee's background check is returned with a criminal offense for actions related to bodily injury, theft or misuse of funds or property, or other crimes inimical to public welfare, the facility must keep on file a written decision to hire that records the reason the facility has determined that the employee's prior criminal offense poses no foreseeable risk of abuse, neglect, or exploitation to residents.
- 5.11.f The licensee must ensure that no staff persons perform any duties when their judgment or physical ability is impaired to the extent that they cannot perform duties adequately or be held accountable for their duties.
- 5.11.g There must be at least one (1) staff member on duty and in charge at all times. In homes with more than fifteen (15) residents, there must be at least one (1) responsible staff

member on duty and awake at all times. The number of staff in all homes must be sufficient to provide for the care and supervision of all residents. There must be a record of the staff on duty, including names, titles, dates and hours on duty.

- 5.11.h In homes that include six (6) or more nursing home level of care residents, there must be at least two (2) caregivers per shift. In a home with any nursing home level of care residents, at least one caregiver must be awake at all times. Depending on resident needs, the second staff person assigned to the overnight shift is not required to be awake.
- 5.11.i The licensing agency may require a home to have specified staffing levels in order to meet the needs of residents.

### **5.12 Records/Reports**

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

5.12.b The home must keep and maintain the following records:

- (1) A resident register, including all discharges, transfers out of and returns to the home and all admissions.
- (2) A record for each resident which includes: resident's name; emergency notification numbers; name, address and telephone number of any legal representative or, if there is none, the next of kin; licensed health care provider's name, address and telephone number; instructions in case of resident's death; the resident's assessment(s); progress notes regarding any accident or incident and subsequent follow-up; progress notes regarding any illness or change in condition and subsequent related follow-up; list of allergies; a signed admission agreement; a recent photograph of the resident, unless the resident objects; a copy of the resident's advance directives, if any completed; and a copy of the document giving legal authority to another, if any.
- (3) For residents requiring nursing care, including nursing overview or medication management, the record must also contain: initial assessment; annual reassessment; significant change assessment; licensed health care provider's admission statement and current orders; staff progress notes including changes in the resident's condition and action taken; and reports of licensed health care provider visits, signed telephone or electronic orders and treatment documentation; and resident plan of care.
- (4) The results of the criminal record and adult abuse registry checks for all staff.
- (5) A written report of any accident, incident, or illness involving a resident must be placed in the resident's record.

5.12.c A home must file the following reports with the licensing agency:

- (1) When a fire occurs in the home, regardless of size or damage, the home must notify the licensing agency and the Department of Public Safety's Division of Fire Safety within twenty-four (24) hours. A written report must be submitted to both departments within seventy-two (72) hours. A copy of the report must be kept on file.
- (2) Any untimely deaths or serious injury as a result of an accident or incident must be reported to the licensing agency and a record kept on file.
  - i. In those deaths in which the law applies (such as an unexpected, untimely death),



pursuant to 18 V.S.A. §5205 (a), the manager is responsible for immediately notifying the regional medical examiner.

- ii. In those deaths in which the medical examiner need not be notified, the manager must:
  - (A) Follow the instructions of the deceased, legal representative, if any, next of kin, or other relative regarding funeral and other related arrangements.
  - (B) In instances where the services of an undertaker are not immediately available, and the resident occupied a multi-bed room, the manager must arrange for the immediate removal of the body of the deceased resident to a separate unoccupied room.
  - (C) Remove a deceased resident's body from the home within a reasonable amount of time, given the circumstances, but in any case, within the time required by the local town or municipal ordinance, if any.
- iii. When a resident dies unexpectedly or within two (2) weeks of a fall, injury or incident (such as choking, exposure, etc.), the licensee must send a report to the licensing agency with the following information:
  - (A) Name of resident;
  - (B) Circumstances of the death; and
  - (C) Circumstances of any recent injuries, falls, or incidents.
- (3) Any unexplained absence of a resident from a home for more than two (2) hours must be reported to the police, legal representative and family, if any. The incident must be reported to the licensing agency within twelve (12) hours of disappearance, followed by a written report within forty-eight (48) hours, a copy of which must be maintained.
- (4) Any breakdown or cessation to the home's physical plant's major services (plumbing, heat, water supply, air conditioning, etc.) or supplied service, which disrupts the normal course of operation. The licensee must notify the licensing agency immediately whenever such an incident occurs. A copy of the report must be sent to the licensing agency within seventy-two (72) hours.
- (5) Any reports, allegations or incidents of abuse, neglect, exploitation of residents or misappropriation of resident property must be reported to the licensing agency.
  - i. The licensee and staff must report any case of suspected abuse, neglect or exploitation of a resident to Adult Protective Services (APS). A separate report must also be made to the licensing agency. APS may be contacted by calling toll-free 1-800-564-1612. The licensing agency may be contacted by calling toll-free 1-888-700-5330. The home must make the reports to APS and to the licensing agency immediately but not later than within 48 hours of learning of the suspected, reported or alleged incident.
  - ii. In addition to filing the reports as described above, a home must conduct its own investigation and must take immediate steps to prevent further abuse, neglect or exploitation from occurring. The results of the home's investigation must be reported to the licensing agency within 5 business days from the date of the initial report of the allegation. The home's investigation and determination must not

delay reporting of the alleged or suspected incident to Adult Protective Services and to the licensing agency.

iii. Incidents involving resident-to-resident abuse must be reported to the licensing agency any time a resident alleges, or the licensee or staff observe or suspect, verbal, physical or mental abuse; sexual abuse, if an injury has resulted; or if there is a pattern of abusive behavior.

(A) All resident-to-resident incidents, even minor ones, must be recorded in the resident's record.

(B) The home must notify legal representatives and families (if permitted) about the incident(s) and must document the report and the plan the home developed to address the behaviors.

(6) A written report of resident injury or death following the use of mechanical or chemical restraint.

(7) A written report of all medication errors that result in the need for medical attention.

5.12.d Reports and records must be filed and stored in an orderly manner so that they are readily accessible and available for reference within two (2) hours of request.

5.12.e Resident records must be kept on file at least seven (7) years after the date of either the discharge or death of the resident.

### **5.13 First Aid Equipment and Supplies**

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

5.13.b. Supplies of personal protective equipment needed to care for residents with suspected or confirmed communicable disease must be kept onsite to meet urgent needs. The supply should be sufficient for at least a 7-day period.

### **5.14 Restraints and Seclusion**

5.14.a Mechanical restraints may be used only in an emergency to prevent serious injury to a resident or others and must not be used as an on-going form of treatment. The use of a mechanical restraint constitutes nursing care.

5.14.b When a temporary/emergency mechanical restraint is applied by the staff, a licensed health care provider must be consulted immediately and written approval for the use and/or continuation of the restraint obtained. The written order, signed by the licensed health care provider, must contain the resident's name, date, time of order, and reason for restraint, means of restriction, and period of time the resident is to be restrained. A record must be kept of every time the restraint is applied and removed during the day and night. Restraints must be removed at least every two (2) hours when in use so as to permit personal care to be given. A resident in a restraint must be under continuous supervision by the staff of the home.

5.14.c A resident must not be secluded in any room by locking or fastening a solid door from the outside. Half doors or gates may be employed only with the prior approval of both the licensed health care provider and the licensing agency.

- 5.14.d The home must notify the licensing agency and the resident representative within 24 hours when any restraint is used, and within 72 hours must complete a reassessment of the resident to determine if the resident's needs can be met within the residential care setting. The reassessment must include consultation with the licensed health care provider and the resident or the resident's representative.
- 5.14.e Residents have a right to be free from chemical restraints and unnecessary mechanical restraints. The use of chemical restraints is not permitted. Any time a mechanical or physical restraint is applied, or a drug is prescribed that could be used as a restraint, the resident, at the time the restraint is applied, must be notified of their right to challenge the use of the restraint. A resident has the right to meet with and discuss the challenge with the following individuals:
- (1) The home manager;
  - (2) The licensing agency;
  - (3) The Commissioner of the licensing agency;
  - (4) The Office of the Long-Term Care Ombudsman.
- In the event that a resident does challenge the use of a restraint, the home operator must inform the licensing agency at the time the challenge is raised.

### **5.15 *Policies and Procedures***

Each home must have written policies and procedures that govern all services provided by the home. A copy must be available at the home for review upon request by residents and their representatives, advocacy organizations and the licensing agency.

### **5.16 *Transportation***

- 5.16.a Each home must have a written policy about what transportation is available to residents of the home. The policy must be explained at the time of admission.
- 5.16.b Transportation for medical services and local community functions must be provided up to twenty (20) miles, round-trip without charge, for four (4) round-trips per month. Residents may be charged, at a reasonable rate, for those miles in excess of twenty (20) miles round-trip and for any or all mileage for transportation not prescribed herein.

### **5.17 *Access by Ombudsman, Protection and Advocacy System***

- 5.17.a The home must permit representatives of Adult Protective Services, the Office of the Long-Term Care Ombudsman and Disability Rights Vermont to have access to the home and its residents in order to: visit; talk with; and make personal, social and legal services available to all residents; inform residents of their rights and entitlements; assist residents in resolving problems and grievances.
- 5.17.b Any designated representative of the Office of the Long-Term Care Ombudsman or Disability Rights Vermont must have access to the home at any time in accordance with those programs' state and federal mandates and requirements. Those representatives must also have access to the resident's records with the permission of the resident or as otherwise provided by state or federal law.
- 5.17.c Individual residents have the complete right to deny or terminate any visits by persons having access pursuant to this section.

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

## **VI. Residents' Rights**

- 6.1 Every resident must be treated with consideration, respect and full recognition of the resident's dignity, individuality, and privacy. Care provided to residents must be person-centered. A home may not ask a resident to waive the resident's rights.
- 6.2 Each home must establish and adhere to a written policy, consistent with these rules, regarding the rights and responsibilities of residents, which must be explained to residents at the time of admission.
- 6.3 Residents may retain personal clothing and possessions as space permits, unless doing so would infringe on the rights of others or would create a fire or safety hazard.
- 6.4 A resident must not be required to perform work for the licensee. If a resident chooses to perform specific tasks for the licensee the resident must receive reasonable compensation which must be specified in a written agreement with the resident.
- 6.5 Each resident must be allowed to associate, communicate and meet privately with persons of the resident's own choice. Homes must allow visiting hours from at least 8 a.m. to 8 p.m., or longer. Visiting hours must be posted in a public place.
- 6.6 Each resident may send and receive personal mail unopened.
- 6.7 Residents have the right to reasonable access to a telephone for private conversations. Residents must have reasonable access to the home's telephone except when restricted because of excessive unpaid toll charges or misuse. Restrictions as to telephone use must be in writing. Any resident may, at the resident's own expense, maintain a personal telephone or cell phone in their own room, subject to any restrictions imposed by a court.
- 6.8 A resident may complain or voice a grievance without interference, coercion or reprisal. Each home must establish a written grievance procedure for resolving residents' concerns or complaints that is explained to residents at the time of admission. The grievance procedure must include at a minimum, time frames, a process for responding to residents in writing, and a method by which each resident filing a complaint will be made aware of the role and contact information of the Office of the Long-Term Care Ombudsman and Disability Rights Vermont as an alternative or in addition to the home's grievance mechanism.
- 6.9 Residents may manage their own personal finances. The home or licensee must not manage a resident's finances unless requested in writing by the resident and then in accordance with the resident's wishes. The home or licensee must keep a record of all transactions and make the record available, upon request, to the resident or legal representative and must provide the resident with an accounting of all transactions at least quarterly. Resident funds must be kept separate from other accounts or funds of the home.
- 6.10 The resident's right to privacy extends to all records and personal information. Personal information about a resident must not be discussed with anyone not directly involved in the resident's care. Release of any record, excerpts from or information contained in such records are subject to the resident's written approval, except as requested by

representatives of the licensing agency to carry out its responsibilities or as otherwise provided by law.

- 6.11 The resident has the right to review the resident's medical or financial records upon request.
- 6.12 Residents must be free from mental, verbal or physical abuse, neglect, and exploitation. Residents must also be free from restraints and seclusion as described in Section 5.14.
- 6.13 When a resident is adjudicated to be a person in need of guardianship, such powers as have been delegated by the Probate or Family Court to the resident's guardian devolve to the guardian pursuant to applicable law.
- 6.14 Residents subject to transfer or discharge from the home, under Section 5.3 of these rules, must:
  - 6.14.a Be allowed to participate in the decision-making process of the home concerning the selection of an alternative placement;
  - 6.14.b Receive adequate notice of a pending transfer or discharge; and
  - 6.14.c Be allowed to contest their transfer or discharge by filing a request for a Commissioner's hearing and for a fair hearing before the Human Services Board in accordance with the procedures in 3 V.S.A. §3091.
- 6.15 Residents have the right to refuse care to the extent allowed by law. This includes the right to discharge themselves from the home. The home must fully inform the resident of the consequences of refusing care. If the resident makes a fully informed decision to refuse care, the home must respect that decision and is absolved of further responsibility. If the refusal of care will result in a resident's needs increasing beyond what the home is licensed to provide, or will result in the home being in violation of these rules, the home may issue the resident a thirty (30) day notice of discharge in accordance with section 5.3.a of these rules.
- 6.16 Residents have the right to formulate advance directives, to have in place DNR and clinician-ordered life-sustaining treatment (COLST) documents, as provided by state law, and to have the home follow the residents' wishes.
- 6.17 ACCS residents have the right to be away from the home for voluntary leaves of more than 24 hours, unless a legally appointed guardian directs the home otherwise. ACCS residents have the right to make decisions about such voluntary leaves without influence from the home.
- 6.18 The enumeration of residents' rights will not be construed to limit, modify, abridge or reduce in any way any rights that a resident otherwise enjoys as a human being or citizen. A copy of the Residents Rights set forth in this section must be written in clear language, large print (font size 18), given to residents on admission, and posted conspicuously in a public place in the home. The home's grievance procedure and directions for contacting the Office of the Long-Term Care Ombudsman and Disability Rights Vermont also must be written in the same font size, provided to each resident, and posted in the same location as the statement of Residents' Rights.
- 6.19 Residents have a right to establish a residents' council that meets in the home. Resident councils must be afforded the opportunity to be self-directed and to meet privately

without staff present. The home must record concerns that are communicated to it as a result of the council and must document the action taken in response.

- 6.20 Residents have a right to be informed by the home, and to have visitors informed, if any video or audio surveillance is underway in any resident areas.

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

### **7.1 Food Services**

#### **7.1.a Menus and Nutritional Standards**

- (1) The home must provide each resident with a nourishing, palatable, well-balanced diet that meets their daily nutritional and special dietary needs, taking into account the preferences of each resident.
- (2) Menus for regular and therapeutic diets must be planned and written at least one (1) week in advance.
- (3) The meals served each day must provide 100% of the current Dietary Reference Intakes for adults age 60 and older as established by the Food and Nutrition Board of the National Academy of Sciences, National Research Council and comply with the Dietary Guidelines for Americans. Reference material for meal planning can be located at: [www.dietaryguidelines.gov](http://www.dietaryguidelines.gov)
- (4) The current week's regular and therapeutic menu must be posted in a public place for residents and other interested parties.
- (5) The home must follow the written, posted menus. If a substitution must be made, the substitution must be recorded on the written menu.
- (6) The home must keep menus, including any substitutions, for the previous month on file and available for examination by the licensing agency.
- (7) There must be a written order from a licensed health care provider in the resident's record for all therapeutic diets, and the home must ensure that the therapeutic diets are provided, including mechanically-altered diets.
- (8) The home must maintain sufficient food supplies at hand on the premises to meet the requirements of the planned weekly menus.
- (9) No more than 14 hours may elapse between the end of an evening meal and offering the morning meal.
- (10) The home must provide or obtain appropriate education and training for its chief food service staff to ensure the proper preparation and storage of all food items. The training provided to such staff must be documented by the home.

#### **7.1.b Meal Planning Guidelines**

- (1) The home must follow current Dietary Guidelines for Americans in planning and providing resident meals. Fresh fruits and vegetables must be on the menu daily.
- (2) The home must consider each resident's dietary needs with respect to health status, age, gender and activity level, particularly with regard to portion sizes and frequency of meals and snacks. In taking these factors into consideration, overall nutrient intake must not be compromised.

### 7.1.c Meal Service

- (1) Each home must provide residents with three nutritionally balanced, attractive and satisfying meals in accordance with these rules. Meals must be served at an appropriate temperature and at normal meal hours, unless a resident has requested a reasonable alternative meal schedule. Texture modifications will be accommodated as needed.
- (2) Supplemental nourishment (snacks) must be available to residents at all times.
- (3) Residents must be allowed an adequate amount of time to eat each meal at an unhurried pace.
- (4) Residents must be provided with comparable alternatives of similar nutritional value to the planned meal upon request.

## 7.2 ***Food Safety and Sanitation***

- 7.2.a Each home must procure food from sources that comply with all laws relating to food and food labeling. The home must ensure that all food is safe for human consumption, free of spoilage, filth or other contamination. All milk products served and used in food preparation must be pasteurized. Cans with dents, swelling or leaks must be rejected and kept separate until returned to the supplier.
- 7.2.b All perishable food and drink must be labeled, dated and held at proper temperatures:
- (1) At or below 40 degrees Fahrenheit.
  - (2) At or above 140 degrees Fahrenheit when served or heated prior to service.
  - (3) Staff must monitor the temperature of temperature-controlled food storage areas. Staff must conduct regular temperature checks of prepared food to ensure proper food safety and must document the time and results of each check. The U.S. Department of Agriculture provides guidance for time and temperature curves to ensure prepared foods remain outside of the 'danger zone' for food safety.
- 7.2.c All work surfaces must be cleaned and sanitized after each use. Equipment and utensils must be cleaned and sanitized after each use and stored properly.
- 7.2.d The home must ensure that food handling and storage techniques are consistent with safe food handling practices.
- 7.2.e The use of outdated, unlabeled, or damaged canned goods is prohibited, and such goods must not be maintained on the premises.

## 7.3 ***Food Storage and Equipment***

- 7.3.a All food and drink must be stored so as to protect from dust, insects, rodents, overhead leakage, unnecessary handling and all other sources of contamination.
- 7.3.b Areas of the home used for storage of food, drink, equipment or utensils must be constructed to be easily cleaned and must be kept clean.
- 7.3.c All food service equipment must be kept clean and maintained according to manufacturer's guidelines.
- 7.3.d All equipment, utensils and dinnerware must be in good repair. Cracked or badly chipped dishes and glassware must not be used.

- 7.3.e Single service items, such as paper cups, plates and straws, must be used only once. They must be purchased and stored in sanitary packages or containers in a clean dry place and handled in a sanitary manner.
- 7.3.f Food service areas must not be used to empty bed pans or urinals-or as access to toilet and utility rooms. If soiled linen is transported through food service areas, the linen must be in an impervious container.
- 7.3.g Doors, windows and other openings to the outdoors must be screened against insects, as required by seasonal conditions.
- 7.3.h All garbage must be collected and stored to prevent the transmission of contagious diseases, creation of a nuisance, or the breeding of insects and rodents, and must be disposed of at least weekly. Garbage or trash in the kitchen area must be placed in lined containers with lids.
- 7.3.i Poisonous compounds (such as cleaning products and insecticides) must be labeled for easy identification and must not be stored in the food storage area unless they are stored in a separate, locked compartment within the food storage area.

## **VIII. Laundry Services**

- 8.1 The home must launder bed and bath linens used by the residents. The home must launder and return the residents' personal clothing.
  - 8.1.a The home must make provisions for residents who choose to launder their own personal clothing.
  - 8.1.b Clean and soiled laundry must be separated at all times.
  - 8.1.c All soiled laundry must be stored and transported in a closed, impervious container.
  - 8.1.d Each resident's personal laundry must be identified by a distinctive marking or other method and must be returned to the resident after laundering.
  - 8.1.e Laundering must be done so that laundered items are clean and in good condition. Personal items damaged or lost by the home must be replaced by the home.

## **IX. Physical Plant**

### **9.1 *Environment***

- 9.1.a The home must provide and maintain a safe, functional, sanitary, homelike and comfortable environment. This includes outdoor areas that are used by residents.
- 9.1.b All homes must comply with all currently applicable state and local rules, rules, codes and ordinances. Where there is a difference between codes, the code with the higher standard will apply.
- 9.1.c The home must ensure that the resident environment remains as free of accident hazards as possible. Maintaining a safe environment must include the safe storage and clear labeling of chemical agents, which must include secure storage of such agents if the home has residents with cognitive impairment.
- 9.1.d A home must not install a door security system that prevents residents from readily exiting the building without prior written approval for the system from the licensing agency.



- 9.1.e A home must ensure that there is a mechanism, such as a doorbell, for residents to signal staff if they are in need of re-entry into the building during all hours.
- 9.1.f All homes must establish and maintain an infection prevention and control program, consistent with national and state standards, designed to provide a safe and sanitary environment and to help prevent the development and transmission of communicable diseases and infections.

## **9.2 Residents' Rooms**

- 9.2.a Each bedroom must have at least 100 square feet of useable floor space in single rooms and at least 80 square feet per bed in double-bed rooms, exclusive of toilets, closets, lockers, wardrobes, alcoves or vestibules. These specifications may be waived for beds licensed prior to the adoption of the 1987 rules.
- 9.2.b Rooms must be of dimensions that allow for the potential of not less than three (3) feet between beds and three feet between the bed and the side wall to facilitate cleaning and easy access.
- 9.2.c Each bedroom must have an outside window.
  - (1) Windows must be openable and screened except in construction containing approved mechanical air circulation and ventilation equipment.
  - (2) Window shades, blinds or curtains must be provided to control natural light and offer privacy.
- 9.2.d The door opening of each bedroom must be fitted with a full-size door of solid core construction.
- 9.2.e Resident bedrooms must be used only as the personal sleeping and living quarters of the residents assigned to them.
- 9.2.f A resident must not have to pass through another bedroom or bathroom to reach the resident's own bedroom.
- 9.2.g The home must provide each resident with a bed that is a standard-size full or twin bed. Roll-away beds, cots and folding beds must not be used for residents.
- 9.2.h Each bed must be in good repair, with a clean, comfortable mattress that is at least 6 inches thick, and standard in size for the particular bed, a pillow, bedspread, and a minimum of one (1) blanket, two (2) sheets, and one (1) pillowcase.
- 9.2.i Each resident must be provided adequate closet and drawer space to accommodate clothing and personal needs.

## **9.3 Toilet, Bathing and Lavatory Facilities**

- 9.3.a Toilet, lavatories and bathing areas must be equipped with grab bars for the safety of the residents. There must be at least one (1) full bathroom that meets the requirements of the Americans with Disabilities Act of 1990 and state building accessibility requirements as enforced by the Department of Public Safety, Division of Fire Safety.
- 9.3.b There must be a minimum of one (1) bath unit, toilet and lavatory sink, exclusively available to residents, per eight (8) licensed beds per floor. Licensed beds having private lavatory facilities (bath, toilet and lavatory sink) are not included in this ratio.

- 9.3.c Each lavatory sink must be at least of standard size and must be equipped with hot and cold running water, soap, and, if used by multiple residents, paper towels.
- 9.3.d Each bathtub and shower must be constructed and enclosed so as to ensure adequate space and privacy while in use.
- 9.3.e Resident lavatories and toilets must not be used as utility rooms.

#### **9.4 Recreation and Dining Rooms**

- 9.4.a All homes must provide at least one (1) well-lighted and ventilated living or recreational room and dining room for the use of residents.
- 9.4.b Combination dining and recreational rooms are acceptable but must be large enough to serve a dual function.
- 9.4.c Dining rooms must be of sufficient size to seat and serve all residents of the home at the same time.
- 9.4.d Smoking is not permitted in any area of the home, with the exception of the manager's living quarters if the manager lives onsite. The home may designate an area outside the home as a smoking area, so long as its location does not have a negative impact on the residents and staff, and noncombustible safety-designed ashtrays or receptacles are provided.

#### **9.5 Home Requirements for Persons with Disabilities**

- 9.5.a Each home must be accessible to and functional for residents, personnel and members of the public with disabilities in compliance with the Americans with Disabilities Act.
- 9.5.b Residents who are blind or who have a mobility disability must not be housed above the first floor unless the home is in compliance with all applicable codes, rules and laws as required by the Department of Public Safety, Division of Fire Safety.

#### **9.6 Plumbing**

- 9.6.a All plumbing must operate in such a manner as to prevent back-siphonage and cross-connections between potable and non-potable water. All plumbing fixtures and any part of the water distribution or sewage disposal system must operate properly and be maintained in good repair.
- 9.6.b Plumbing and drainage for the disposal of sewage, infectious discharge, household and institutional wastes must comply with all State and Federal rules.
- 9.6.c All plumbing fixtures must be clean and free from cracks, breaks and leaks.
- 9.6.d Hot water temperatures must not exceed 120 degrees Fahrenheit in resident areas.

#### **9.7 Water Supply**

- 9.7.a Each home must be connected to an approved public water supply when available and where said supply is in compliance with the Department of Health's public water system rules.
- 9.7.b If a home uses a private water supply, said supply must conform to the construction, operation and sanitation standards published by the Department of Health. Private water supplies must be tested annually for contamination, and copies of results must be kept on premises.

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

### **9.8 Heating**

- 9.8.a Each home must be equipped with a heating system which is of sufficient size and capability to maintain sufficient heat in all areas of the home used by residents, and which complies with applicable fire and safety rules.
- 9.8.b The minimum temperature must be maintained at an ambient temperature of 70 degrees Fahrenheit in all areas of the home utilized by residents and staff during all weather conditions.

### **9.9 Ventilation**

- 9.9.a Homes must be adequately ventilated to provide fresh air and must be kept free from smoke and objectionable odors.
- 9.9.b Kitchens, laundries, toilet rooms, bathrooms, and utility rooms must be ventilated to the outside by window or by ventilating duct and fan of sufficient size.
- 9.9.c During the warmer months, adequate cooling must be provided to ensure that the temperature of resident areas does not exceed 81 degrees Fahrenheit.

### **9.10 Life Safety/Building Construction**

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

### **9.11 Disaster and Emergency Preparedness**

- 9.11.a The licensee or manager of each home must maintain a written disaster preparedness plan. The plan must outline procedures to be followed in the event of any emergency potentially necessitating the evacuation of residents, including but not limited to: fire, flood, loss of heat or power, or threat to the home.
- 9.11.b If the home is located within ten (10) miles of a nuclear power plant, the plan must include specific measures for the protection, treatment and removal of residents in the event of a nuclear disaster.
- 9.11.c Each home must have in effect, and available to staff and residents, written copies of a plan for the protection of all persons in the event of an emergency and for evacuating the building when necessary. All staff must be instructed periodically and kept informed of their duties under the plan.
- 9.11.d There must be an operable telephone on each floor of the home, available to residents at all times. A list of emergency telephone numbers must be posted by each telephone.

## **X. Pets**

- 10.1 Pets may visit the home providing the following conditions are met:
  - 10.1.a The pet owner must provide evidence of current vaccinations.
  - 10.1.b The pet must be clean, properly groomed and healthy.
  - 10.1.c The pet owner is responsible for the pet's behavior and must maintain control of the pet at all times.

- 10.2 Pets, owned by a resident or the home, may reside in the home providing the following conditions are met:
  - 10.2.a The home must ensure that the presence of a pet causes no discomfort to any resident.
  - 10.2.b The home must ensure that pet behavior poses no risk to residents, staff or visitors.
  - 10.2.c The home must have procedures to ensure that pets are kept under control, fed, watered, exercised and kept clean and well-groomed and that they are cleaned up after.
  - 10.2.d Pets must be free from active disease, receive regular veterinarian care and are vaccinated against common communicable diseases.
  - 10.2.e Pet health records must be maintained by the home and made available to the public.
  - 10.2.f The home must maintain a separate area for feeding cats and dogs other than the kitchen or resident dining areas.

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

- 11.1 A resident's money and other valuables must be in the control of the resident, except where there is a guardian, or attorney in fact (power of attorney), who requests otherwise. The home may manage the resident's finances only upon the written request of the resident. There must be a written agreement stating the assistance requested, the terms of same, the funds or property and persons involved.
- 11.2 If the home manages the resident's finances, the home must keep a record of all transactions, provide the resident with a quarterly statement, and keep all resident funds separate from the home or licensee's funds.
- 11.3 The personal property of the resident must be available for the resident's use and securely maintained when not in use.
- 11.4 The resident must not be solicited in any way for gifts or other consideration by persons connected with the home.
- 11.5 When it becomes apparent that a resident is no longer capable of managing funds and/or property, the licensee must contact the resident's legal representative if any. If there is no legal representative, the licensee must meet with the resident to discuss the resident's ability to manage funds and/or property. The licensee must inform the resident of their right to consult with the State Long Term Care Ombudsman's Office to discuss their options for assistance with managing their funds.
- 11.6 When a resident is absent without explanation for a period of thirty-one (31) days and there is no responsible person, the licensee must hold the property for six (6) months. At the conclusion of this period, the property must be transferred to the selectboard of the town.
- 11.7 Each home must develop and implement a written policy regarding resident's personal spending needs. The policy must be explained to the resident upon admission, with a copy provided to the resident at that time.
  - 11.7.a The personal needs policy must include a provision that recipients of Supplemental Security Income (SSI) will retain from their monthly income an amount adequate to meet their personal needs exclusive of all other rates, fees or charges by the home. The amount must be sufficient to meet such personal needs as clothing and incidental items, reading matter, small gifts, toiletries, occasional foods not provided by the home and other such

items.

- 11.7.b For SSI or Medicaid recipients in homes participating in ACCS, the amount must be at least as much as the personal needs allowance provided Medicaid recipients in nursing homes as set by federal and state law.
- 11.8 The licensee, the licensee's relative or any staff member must not be the legal guardian, trustee or legal representative for any resident other than a relative. The licensee or any staff of the home are permitted to act as the resident's representative payee according to Social Security rules provided the resident or the resident's legal representative agrees in writing to this arrangement and all other provisions of these rules related to money management are met.
- 11.9 No licensee, staff or other employee of the home may solicit, offer or receive a gift, including money or gratuities, from a resident. Nominal gifts, such as candy or flowers that can be enjoyed by all staff, are permissible, but should not be solicited.

## **XII. Nursing Home Level of Care**

- 12.1.a The provision of nursing home level of care means the provision of services that require specialized knowledge, judgment and skill, all of which meet the standards of nursing as set forth in 26 V.S.A. Chapter 28. A home that wishes to admit or retain a resident who requires nursing home level of care must obtain prior written approval from the licensing agency in the form of a variance and must demonstrate to the licensing agency's satisfaction that it has the capacity to provide the necessary care and services. Enhanced Residential Care providers must provide the services agreed to in the Enhanced Residential Care provider agreement with the state of Vermont and outlined in their Admissions Agreements with ERC residents
- 12.1.b Residents who require more than nursing overview or medication management on a short-term or temporary basis may be retained in a residential care home without a variance, provided that the home meets the requirements of subsections (1) - (5) below:
  - (1) The nursing services required are:
    - a . Provided fewer than three times per week; or
    - b. Provided for up to seven days a week for no more than thirty (30) days and the resident's condition is improving during that time and the nursing service provided is limited in nature; or
    - c. Provided by a Medicare-certified hospice program; and
  - (2) The home 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; and
  - (3) The home is able to meet the resident's needs without detracting from services to other residents; and
  - (4) The home has a uniform consumer disclosure that is provided 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
  - (5) Residents receiving such care are fully informed of their options and agree to such care in the residential care home.
- 12.2 Staffing - A home with residents who are assessed as needing nursing home level of care

must have sufficient staff to provide nursing and related services to attain or maintain the highest practicable physical, mental and psycho-social well-being of each resident, as determined by resident assessments and individual plans of care or as specified by the licensing agency.

- (1) The home must have at least one licensed nurse on the premises or available on-call who has the professional licensure or capacity through facility policies and procedures to assess residents when needed and provide nursing care on a twenty-four (24) hour basis, seven (7) days a week.
  - (2) A home with six (6) or more nursing home level of care residents must have at least two (2) caregivers on duty on each shift. The second caregiver on the night shift is not required to be awake.
  - (3) A home with residents who are assessed as being incapable of self-evacuation must have sufficient staff during each shift to ensure the safe evacuation, if applicable, of all residents, including those needing assistance.
  - (4) The registered nurse must be available onsite at least one (1) hour per week per nursing home level of care resident.
  - (5) There must be sufficient direct care staff onsite to ensure at least two (2) hours per day of assistance with personal care, per nursing home level of care resident.
- 12.3 Quality of Life - A home with nursing home level of care residents must care for its residents in a manner and in an environment that promotes the maintenance or enhancement of each resident's quality of life.
- 12.3.a The home must provide, based on the preferences of each resident, an ongoing program of activities designed to meet the interests of each resident, encouraging both independence and interaction in the community.
- 12.4 Activities of Daily Living - The home must ensure that a resident's abilities in activities of daily living do not diminish unless the circumstances of the resident's clinical condition demonstrate that diminution was unavoidable.
- 12.4.a The home must provide services to any resident who is unable to carry out the activities of daily living necessary to maintain mobility, good nutrition, grooming, and personal and oral hygiene.
- 12.5 Bed Rails - Prior to installing a side or bed rail, the licensee must attempt to use appropriate alternatives. If a side or bed rail is used, the licensee must ensure the correct installation, use, assessment and maintenance of the rail(s).
- 12.6 Quality Assurance and Performance Improvement - A home with any nursing home level of care residents must develop a quality improvement program that identifies and addresses quality issues.
- 12.6.a The licensee must assemble and employ an internal quality improvement committee.
- (1) The quality improvement committee must consist of the manager of the home, a registered nurse, and at least one other direct care staff member. Residents, and other representatives may be added as needed to achieve program objectives.
  - (2) The quality improvement committee must meet at least quarterly to identify issues with quality improvement, to develop and implement appropriate plans of action to correct identified quality deficiencies, and to review and act upon resident satisfaction surveys.
  - (3) The quality improvement committee must allow residents to have meaningful opportunities to provide input, to discuss grievances, and to review plans of action.

- 12.6.b The home must conduct resident satisfaction surveys at least annually and must compile the results of such surveys to identify issues to be addressed by the quality improvement committee.
- 12.6.c The quality improvement committee must maintain the confidentiality of individual resident information from satisfaction surveys, from input at committee meetings, or from the complaint or grievance process, with specific complaints and grievances reviewed only by appropriate staff and outside parties, as requested by the resident. Such information must be made available to the licensing agency upon request.
- 12.6.d No good faith efforts by the quality improvement committee to identify and correct quality deficiencies will be used as a basis for sanctions.
- 12.7 A home with any nursing home level of care residents shall submit a report of all nursing home level of care residents, on a quarterly basis, on a form provided by the licensing agency.

### **XIII. Assisted Living Residence**

#### **13.1 General Provisions**

- 13.1.a Introduction. The following provisions are designed to protect the welfare and rights of residents and to ensure that residents receive quality care. The following provisions also are intended to ensure that homes licensed as assisted living residences promote resident individuality, privacy, dignity, self-direction, and active participation in decision-making.
- 13.1.b Statutory Authority. The Agency of Human Services has designated the Department of Disabilities, Aging and Independent Living, Division of Licensing and Protection, as the licensing and regulatory agency for assisted living residences as defined at 33 V.S.A. §7102(1).

#### **13.2 Exceptions**

- 13.2.a To obtain and maintain a license to operate an assisted living residence an applicant or licensee must meet all the requirements applicable to Residential Care Homes, except for the following subsections of those rules:
  - (1) Eligibility: 5.1 (a) and 5.1(b).
  - (2) Uniform Consumer Disclosure and Admission Agreements: 5.2(a) and 5.2(h).
  - (3) Physician Services: 5.8(a).
  - (4) Level of Care and Nursing Services: 5.9(b) and (e).
  - (5) Residents' Rooms: 9.2(a), (b), (c)(2), (g), (h), and (i). If a unit is rented furnished, however, or is being converted from a Level III unit, there is no exception to the requirements of 9.2(c)(2).
  - (6) Toilet, Bathing, and Lavatory Facilities: 9.3(b)

#### **13.3 Licenses**

- 13.3.a The licensing agency will not issue an assisted living residence license to an applicant unless all of the applicable requirements of the Residential Care Home Licensing Rules for a Level III home are met, with exceptions noted above.
- 13.3.b The licensing agency will not issue an assisted living residence license unless all residence units within the facility meet the definition for assisted living residence as set forth above.

### **13.4 Resident Care and Services**

13.4.a Eligibility. The licensee may accept and retain 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 assisted living residence, with the following exceptions:

- (1) The licensee 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; and
- (2) The licensee may not admit any individual who has the following equipment, treatment, or care needs: ventilator, stage III, or IV pressure ulcer, nasopharyngeal, oral or tracheal suctioning or two-person assistance to transfer from bed or chair or to ambulate.

A current resident of the facility who develops a need for equipment, treatment, or care as listed above in (2) or who develops a terminal illness may remain in the residence so long as the licensee can safely meet the resident's needs and/or the resident's care needs are met by an appropriate licensed provider.

13.4.b Admission. The licensee may require a lease in addition to the written admission agreement required pursuant to the Residential Care Home Licensing Rules.

13.4.c Aging in Place. A licensee must provide personal care and supportive services, which may include nursing services, to meet the needs and care plans of residents assessed at or below the following levels of need according to the assessment protocol specified by the licensing agency:

- (1) Mobility, ambulation, and transfer needs can be met with the assistance of one staff person;
- (2) A cognitive impairment at a moderate or lesser degree of severity; or
- (3) Behavioral symptoms that consistently respond to appropriate intervention.

13.4.d Licensed Health Care Provider Services. Residents who have an identified acute or chronic medical problem or who are deemed to need nursing overview or nursing care must be under the continuing general care of a licensed health care provider of their choosing.

13.4.e Involuntary Discharge of Residents. The expectation is that individuals will be permitted to age in place as set forth in Section 13.4.c and not be required to leave an assisted living residence involuntarily. When a resident is required to leave, however, the provisions of this section supersede the requirements of the Residential Care Home Licensing Rules, Section 5.3.a(1). The licensee may not initiate a discharge because a resident's choice might pose a risk if the resident is their own decision-maker and the choice is informed and poses a danger or risk only to the resident. An involuntary discharge of a resident may occur only when:

- (1) 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;
- (2) The resident presents a serious threat to residents or staff that cannot be managed through interventions or care planning;



- (3) A court has ordered the discharge or eviction;
  - (4) The resident failed to pay rental, service, or care charges in accordance with the admission agreement;
  - (5) The resident refuses to abide by the terms of the admission agreement; or
  - (6) If the licensee can no longer meet the resident's level of care needs in accordance with Section 13.4.c.
- 13.4.f Refusals and Non-Duplication. The licensee must not provide or arrange any service for a resident that the resident refuses or chooses to obtain from another source.
- 13.4.g Care Plans. The licensee, the resident, and/or the resident's legal representative must work together to develop and maintain a written resident care plan for those residents who require or receive care. The care plan must describe the assessed needs and choices of the resident and must support the resident's dignity, privacy, choice, individuality, and independence. The licensee must review the plan at least annually, and whenever the resident's condition or circumstances warrant a review, including whenever a resident's decision, behavior, or action places the resident or others at risk of harm or the resident is incapable of engaging in a negotiated risk agreement.
- 13.4.h Services. The licensee must have the capacity to provide the following services:
- (1) A daily program of activities and socialization opportunities, including periodic access to community resources; and
  - (2) Social services, which must include information, referral, and coordination with other appropriate community programs and resources such as hospice, home health, transportation, and other services necessary to support the resident who is aging in place.
- 13.4.i Uniform Consumer Disclosure. A licensee must state in its licensing application and in a uniform consumer disclosure the services it will provide, the public programs or benefits that it accepts or delivers, the policies that affect a resident's ability to remain in the residence, and any physical plant features that vary from the assisted living residence requirements found in Section 13.9.
- (1) The uniform consumer disclosure must be completed on a form provided by the licensing agency and must be kept on file by the licensee.
  - (2) The uniform consumer disclosure must describe all service packages, tiers, and rates.
  - (3) The uniform disclosure form must include a statement that rates are subject to change, including rate changes due to increased care needs, and describe the situations in which the change(s) could occur.
  - (4) The disclosure must be provided:
    - a. to residents prior to or at admission and at any time it is changed or is requested by the resident; and
    - b. to the public upon request.
  - (5) The availability of a uniform consumer disclosure must be noted prominently in all marketing brochures and written materials.

- (6) A licensee who has specialized programs such as dementia care must include a written statement of philosophy and mission and a description of how the assisted living residence can meet the specialized needs of residents in the uniform disclosure form and in the admission agreement.
- 13.4.j Notice of Changes. The licensee must give each resident and the licensing agency a written ninety-day notice when its services, rates, retention policies, or physical plant will change in a way that will significantly enhance or significantly restrict the potential for aging in place.
- 13.4.k Training. The licensee must provide training in the philosophy and principles of assisted living to all staff. Staff who regularly interact with residents in the facility and/or programs must have training in understanding dementia and communications skills specific to persons with Alzheimer’s Disease and other types of dementia.
- 13.4.l Resident Records. In addition to those documents required by the Residential Care Home Licensing Rules, the licensee must ensure resident records include:
  - (1) Copies of any negotiated risk agreements and care plans; and
  - (2) Copies of lease agreements, if applicable and/or required.
- 13.4.m Licensee Records. The licensee must maintain current records of any contracts and/or subcontracts with outside providers, agencies, suppliers, and public programs. Residents must be given access to such documents and provided a copy upon request.

**13.5 Policies and Procedures**

- 13.5.a Policies. In addition to those policies required under the Residential Care Home Licensing Rules, the licensee must establish policies and procedures regarding:
  - (1) Unexplained absences of residents;
  - (2) Behavioral symptoms of the residents, including but not limited to wandering, sexually inappropriate or socially disruptive behaviors, or resistance to care;
  - (3) Managing residents with declining cognitive status, including incompetence, and setting forth when and how a legal guardian will be obtained;
  - (4) Negotiated risk agreement process, including the identity of the responsible staff person; and
  - (5) Use by the residents of the community kitchen, if applicable, as well as other common areas.
- 13.5.b Quality Improvement. The licensee must develop a quality improvement program that identifies and addresses quality issues. At a minimum, the licensee must:
  - (1) Have an internal quality improvement committee that must: (i) consist of the director of the assisted living residence, a registered nurse, at least one other direct care staff member, a resident and other representatives as needed to achieve program objectives; (ii) meet at least quarterly to identify issues with respect to quality improvement, to develop and implement appropriate plans of action and to review and act upon resident satisfaction surveys; (iii) allow residents to have meaningful opportunities to provide input, to discuss grievances and to review plans of action.

(2) Conduct resident satisfaction surveys at least annually and compile the results of such surveys to identify issues to be addressed by the quality improvement committee.

(3) Maintain confidentiality of individual resident information from satisfaction surveys, input at committee meetings or from the complaint or grievance process, with specific complaints and grievances reviewed only by appropriate staff and outside parties as requested by the resident. Such information must be made available to the licensing agency upon request.

### ***13.6 Agreements and Charges***

13.6.a The purchase of services in an assisted living residence must be optional and solely the voluntary choice of a resident. Residents have the right to arrange for third-party services not available through the assisted living residence through a provider of their choice.

13.6.b The terms of occupancy of a resident unit, together with any utilities, maintenance or management services provided by the licensee, must be included in a written admission agreement and, if applicable, a written lease separate from the admission agreement. When a separate lease agreement regarding the resident unit is entered into, the existence of that agreement must be noted in the admission agreement.

13.6.c The licensee must not vary charges for the occupancy of the resident unit and for utilities based on the resident's long-term care needs. The licensee may charge different amounts based on the size of the unit, the included amenities, and/or any published sliding fee scale or system of housing subsidies administered by the licensee.

13.6.d The licensee may charge for personal care services to meet a resident's health and welfare needs only as bundled daily, weekly, or monthly rates. If a licensee has rates that vary according to tiers of services, the rates for the tiers may vary according to the amount and level of services provided to meet the different levels of need of residents. The differences between the tiers of services must be clearly defined and capable of measurement.

13.6.e A licensee must establish a rate to meet the needs and care plans of all residents assessed as below the Nursing Home Level of Care Guidelines, which will be known as the basic care package. A licensee may establish a rate for independent residents who do not purchase a personal care package, which will be known as an independent package. For residents who meet nursing home levels of care within the mandatory scope of care for assisted living, the licensee must have two tiers of services and rates. A licensee who has a policy of retaining residents above the mandatory scope of care for assisted living must disclose any definitions, tiers, and methodologies used to determine the levels of care and bundled rates.

13.6.f A licensee may charge on a per service basis only for those services that are not required by Assisted Living Residence Licensing Rules. Such services may include, but are not limited to, additional transportation and housekeeping services, hair dressing, social outings, daily papers, garage space, and any activities in addition to those daily activities provided to all residents.

### ***13.7 Negotiated Risk***

13.7.a When the licensee determines that a resident's decision, behavior, or action places the resident at risk of serious harm, and the licensee has attempted and been unable to

mitigate the risk of harm through care planning and other person-centered interventions, the licensee must initiate a risk negotiation process to address the identified risk and to reach a mutually agreed-upon plan of action.

- 13.7.b The licensee must initiate the negotiated risk process by notifying the resident and, if applicable, the legal representative, verbally and in writing. The notice must state that the resident is not required to enter into a negotiated risk agreement. The licensee must also give notice to the resident and legal representative that the State Long-Term Care Ombudsman's Office is available if they have questions or concerns regarding the resident's rights. The notice must include the contact information for the Long-Term Care Ombudsman's Office.
- 13.7.c If the licensee and the resident reach agreement, the mutually agreed upon plan must be in writing.
  - (1) The written plan must be dated and signed by both parties to the negotiation;
  - (2) Each party to the negotiation must receive a copy of the written plan; and
  - (3) A copy of the plan must be attached to and incorporated into the resident's care and service plan.
- 13.7.d If the licensee and the resident are not able to reach agreement, the licensee must notify the Office of the State Long Term Care Ombudsman if the failure to reach agreement results in a notice of involuntary discharge. Licensees are not obligated to discharge the resident if a negotiated risk process is unsuccessful.
- 13.7.e Negotiated risk discussions and the plan must be resident specific. A resident must never be asked to sign a written risk negotiation document before the licensee and the resident have discussed the issue and mutually agreed to the plan.

### ***13.8 Nutrition and Food Services***

- 13.8.a The licensee must have the capacity to provide a full meal and snack program. If such services are offered, the programs must meet the requirements of section 7.1 of the Residential Care Home Licensing Rules. The licensee may allow residents to purchase less than a full meal and snack plan.

### ***13.9 Physical Plant***

- 13.9.a Resident Units. All resident units must be private occupancy unless a resident voluntarily chooses to share the unit.
- 13.9.b At a minimum, resident units must include the following:
  - (1) 225 square feet per unit, excluding bathrooms and closets, unless otherwise provided by these rules.
  - (2) A private bedroom, private bathroom, living space, kitchen capacity, adequate space for storage, and a lockable door, unless otherwise permitted by these rules. Studio/efficiency apartments that offer a private bedroom, living space and kitchen capacity in one large room, and include a private bathroom must meet these requirements.

- (3) The bathroom must be a separate room designed to provide privacy and must be equipped with a toilet, with grab bars, a sink, hot and cold running water, a shower or bathtub, a mirror, and towel racks. Showers or bathtubs must have non-skid surfaces and safety grab bars.
- (4) Kitchens must consist of a food preparation and storage area that includes, at a minimum, a refrigerator with freezer, cabinets, counter space, sink with hot and cold running water, a stove or microwave that can be removed or disconnected, and electric outlets.
- (5) Each unit must provide adequate closet space for clothing and belongings.
- (6) All doors in units, including entrance doors, must be accessible or adaptable for wheelchair use. Entrance doors to units must have a locking device and must be equipped with hardware that is accessible.
- (7). All unit windows must be made of clear glass and permit viewing to the outside.
- (8) Light switches in the units must be located at the entry, in the bedroom, and in the bathroom to control one or more light fixtures.
- (9) Each unit must have at least one telephone jack.
- (10) Each unit must have individual temperature controls for heating and cooling.
- (11) Each unit must be equipped with an emergency response system that will alert the on-duty staff.
- (12) Each unit must be built in conformance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) or the equivalent state building code specifications.

13.9.c Pre-existing structures.

- (1) The licensing agency may grant a variance for pre-existing structures that differ from the minimum requirements set forth above. If such a variance is granted, the specifics of the structural limitations and the terms of the variance will be stated on the license. The licensee must include the information in the uniform disclosure form.
- (2) The licensing agency may grant physical plant variances for pre-existing structures in the following instances:
  - a. Resident units that do not meet the requirements for private kitchen space, but the facility has a community kitchen that includes a refrigerator, sink, cabinets for storage, stove or microwave oven, and a food preparation area. A community resident kitchen must not be the kitchen used by the assisted living residence staff for the preparation of resident or employee meals, or for the storage of goods.
  - b. Resident units in pre-existing structures not previously licensed as residential care homes must have at least 160 square feet of clear living space excluding the bathroom, closet(s), alcoves, and vestibules.
  - c. If the pre-existing structure is a licensed residential care home that was in continuous operation as a licensed residential care home prior to July 1998, the

resident unit clear living space, excluding the bathroom, closet(s), and alcoves, must be at least 100 square feet.

#### 13.9.d Common Areas

- (1) The assisted living residence must have at least two common areas for use by all residents. The common areas must be designed to meet resident needs and must be accessible for wheelchair use. The common areas must provide residents with sufficient space for socialization and recreational activities.
- (2) At least one common area must be available for resident use at any time, provided such use does not disturb the health, safety, and well-being of other residents.

#### 13.9.e Other Common Space

- (1) If an assisted living residence has a community kitchen:
  - a. Residents must have unlimited access to the kitchen; and
  - b. Residents must have individual space in which to store personal food and supplies.
- (2) Access to private or public outdoor recreation areas must be available to residents.
- (3) There must be at least one public restroom in the assisted living residence that meets applicable local, state, and federal accessibility laws and guidelines. It must be convenient to the common areas.
- (4) The assisted living residence must have accessible common dining space outside residential units sufficient to accommodate residents.

Appendix A – Scope and Severity Grid

		SCOPE		
		Isolated	Pattern	Widespread
SEVERITY				
4	Immediate jeopardy to resident health or safety	J	K	L
3	Actual harm that is not immediate jeopardy	G	H	I
2	No actual harm with potential for more than minimal harm that is not immediate jeopardy	D	E	F
1	No actual harm with potential for minimal negative impact	A	B	C