

## Administrative Procedures – Proposed Rule Filing

### **Instructions:**

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

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

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

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

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

/s/ Michael K. Smith , on 9/8/2021  
(signature) (date)

Printed Name and Title:

Michael K. Smith, Secretary of Human Services

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

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

1. TITLE OF RULE FILING:

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

2. ADOPTING AGENCY:

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

3. PRIMARY CONTACT PERSON:

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

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Web URL(*WHERE THE RULE WILL BE POSTED*): [www.dail.vermont.gov](http://www.dail.vermont.gov)

4. SECONDARY CONTACT PERSON:

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

Name: Stuart Schurr

Agency: Agency of Human Services; Department of  
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05671-2020

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5. RECORDS EXEMPTION INCLUDED WITHIN RULE:

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

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

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

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

33 V.S.A. § 7112 provides that information received by  
the licensing agency that pertains to unsubstantiated

complaints or the identity of residents is exempt from public disclosure.

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

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

33 V.S.A. § 7117; 2012 Acts and Resolves No. 160.

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

33 V.S.A. § 7117 authorizes the Secretary of Human Services to adopt reasonable rules for the operation of facilities licensed under this chapter, which include therapeutic community residences. 2012 Acts and Resolves No. 160 directs the Department of Disabilities, Aging, and Independent Living to adopt rules amending the licensing requirements for therapeutic community residences and to include specific requirements for the operation of a secure residential recovery facility.

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

During the Serious Mental Illness/Institutions for Mental Disease (SMI/IMD) waiver negotiations with the Centers for Medicare and Medicaid Services (CMS), the State agreed to amend its rules governing therapeutic community residences to require those facilities to contact any former resident, who had received treatment for serious mental illness, within 72 hours of the resident's discharge.

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

During the SMI/IMD waiver negotiations with CMS, CMS outlined milestones that Vermont needed to meet. Within Milestone 2 is a state requirement to ensure psychiatric hospitals and residential settings contact beneficiaries and community-based providers, through the most effective means possible (e.g., email, text, or phone call), within 72 hours of discharge. Vermont is meeting this requirement by incorporating it into administrative rule.

**10. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:**

The proposed language adheres to the requirements set forth by CMS as to the timing and method of contact.

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

Those potentially affected include the current operators of therapeutic community residences (TCR), the Department of Disabilities, Aging and Independent Living (DAIL), which will be required to ensure that the requirements of the revised regulations are met, the Department of Mental Health (DMH), with regard to the TCR that is licensed as a secure residential recovery facility, the individuals who reside or will reside in these residences, the Mental Health Law Project at Vermont Legal Aid, Inc., and Disability Rights Vermont, which serves as both the Mental Health Care Ombudsman and Vermont's protection and advocacy organization.

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

The administrative costs to DAAIL to ensure that the new requirement is met through survey and inspection will be negligible. There will be no economic impact to the therapeutic community residences as a result of this amendment.

**13. A HEARING IS SCHEDULED .**

**14. HEARING INFORMATION**

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

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

Date: 10/27/2021

Time: 02:00 PM

Street Address: Cherry B Conference Room, Waterbury State Office Complex, 280 State Drive, Waterbury, Vermont (with a call-in option-see attached)

Zip Code: 05671

Date:

Time: AM

Street Address:

Zip Code:

Proposed Rule Coversheet

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

15. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING): 11/5/2021

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

therapeutic community residences

secure residential recovery facility

serious mental illness

mental health

discharge

# Administrative Procedures – Adopting Page

## **Instructions:**

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

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

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

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### 1. TITLE OF RULE FILING:

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

### 2. ADOPTING AGENCY:

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

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

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

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

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

SOS Log #13-044; Licensing and Operating Regulations  
for Therapeutic Community Residences, January 6, 2014.

# Administrative Procedures – Economic Impact Analysis

## **Instructions:**

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose.

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

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

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### 3. CATEGORY OF AFFECTED PARTIES:

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

Those potentially affected by the adoption of this rule  
include:

Operators of therapeutic community residences;

The Department of Disabilities, Aging and Independent  
Living (DAIL);

## Economic Impact Analysis

The Department of Mental Health (DMH);

The individuals who reside or will reside in these therapeutic community residences;

The Mental Health Law Project at Vermont Legal Aid, Inc.; and

Disability Rights Vermont

The estimated costs and benefits anticipated include the following:

Negligible administrative costs to DAIL to ensure that the new requirement is met through survey and inspection; and

Ensuring that residents who were treated for serious mental illness are contacted within 72 hours of their discharge from the residence.

### 4. IMPACT ON SCHOOLS:

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

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

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

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

### 6. IMPACT ON SMALL BUSINESSES:

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

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

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

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



8. COMPARISON:

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

There are no alternatives to the adoption of the rule. Having no rule would conflict with the legislative mandate in 2012 Acts and Resolves No. 160 to amend the TCR regulations to add requirements for a state-operated secure residential recovery facility. Further, CMS requires the amendment as a condition of the SMI/IMD waiver negotiations with the State.

9. SUFFICIENCY: *EXPLAIN THE SUFFICIENCY OF THIS ECONOMIC IMPACT ANALYSIS.*

The Agency of Human Services has analyzed and evaluated the potential costs and benefits from the adoption of this rule and concludes that beyond the potentially negligible impact on DAHL and its staff in ensuring the additional regulatory requirement is met, the rule neither increases nor reduces an economic burden on any other person or entity.

# Administrative Procedures – Environmental Impact Analysis

## **Instructions:**

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis.

Examples of Environmental Impacts include but are not limited to:

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

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

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

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

### 6. RECREATION: *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:* No impact is anticipated

Environmental Impact Analysis

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

No impact is anticipated

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

No impact is anticipated

9. **SUFFICIENCY:** *EXPLAIN THE SUFFICIENCY OF THIS ENVIRONMENTAL IMPACT ANALYSIS.*

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

## Administrative Procedures – Public Input

### **Instructions:**

In completing the public input statement, an agency describes the strategy prescribed by ICAR to maximize public input, what it did do, or will do to comply with that plan to maximize the involvement of the public in the development of the rule.

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

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2. ADOPTING AGENCY:

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3. PLEASE DESCRIBE THE STRATEGY PRESCRIBED BY ICAR TO  
MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE  
PROPOSED RULE:

ICAR prescribed that the Agency of Human Services  
maximize public involvement by completing the public  
rulemaking process, including holding a public hearing  
and considering public comments that are received.

The proposed rule will be posted on the DAAIL website  
for public comment, and a public hearing will be held.

4. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO  
COMPLY WITH THAT STRATEGY:

DAAIL will schedule and hold a public hearing (with a  
date and time to be determined) and will consider  
public comments related to the proposed changes to the  
rule.

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

Agency of Human Services, the Department of  
Disabilities, Aging and Independent Living (DAAIL) and  
Vermont Department of Mental Health (DMH).

LICENSING AND OPERATING  
REGULATIONS FOR  
THERAPEUTIC COMMUNITY  
RESIDENCES

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

Effective: January 6, 2014

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

TABLE OF CONTENTS

<b>I.</b>	<b>General Provisions</b>	1
1.1	Introduction	1
1.2	Statutory Authority	1
1.3	Statement of Intent	1
1.4	Exception and Severability	2
1.5	Taxes	2
1.6	Material Misstatements	2
1.7	Appeals	2
<b>II.</b>	<b>Definitions</b>	2
2.1	General Definitions	2
2.2	Specific Definitions	2
<b>III.</b>	<b>Variances</b>	7
<b>IV.</b>	<b>Licensing Procedures</b>	8
4.1	Application	8
4.2	Review Process	8
4.3	Denial of Application	9
4.4	Re-application	9
4.5	Expiration	10
4.6	Change in Licensed Capacity.	10
4.7	Temporary License	11
4.8	Change in Status	11
4.9	Separate License	12
4.10	Transfer Prohibited	12
4.11	License Certificate	12
4.12	Responsibility and Authority	12
4.13	Survey/Investigation	13
4.14	Violations: Notice Procedure	15
4.15	Enforcement	16
4.16	Identification of Unlicensed Residences	17
4.17	Additional Required Program Components	18
<b>V.</b>	<b>Resident Care and Services</b>	20
5.1	Eligibility	20
5.2	Admission Agreements	20
5.3	Intake	22
5.4	Discharge Requirements	22
5.5	General Care	23
5.6	Health Care Provider Services	23
5.7	Treatment Plan	24

5.8	Medication Management . . . . .	24
5.9	Staff Services . . . . .	28
5.10	Records/Reports . . . . .	30
5.11	First Aid Equipment and Supplies . . . . .	32
5.12	Resident Services . . . . .	32
5.13	Policies and Procedures . . . . .	33
5.14	Transportation . . . . .	33
5.15	Death of a Resident . . . . .	33
5.16	Reporting of Abuse, Neglect or Exploitation . . . . .	33
5.17	Access by Advocacy System . . . . .	34
<b>VI.</b>	<b>Residents' Rights . . . . .</b>	<b>34</b>
<b>VII.</b>	<b>Nutrition and Food Services . . . . .</b>	<b>38</b>
7.1	Food Services . . . . .	38
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 . . . . .	43
9.4	Recreation and Dining Rooms . . . . .	43
9.5	Residence Requirements for Persons with Disabilities . . . . .	43
9.6	Plumbing . . . . .	44
9.7	Water Supply . . . . .	44
9.8	Heating . . . . .	44
9.9	Ventilation . . . . .	45
9.10	Life Safety/Building Construction . . . . .	45
9.11	Disaster and Emergency Preparedness . . . . .	45
9.12	Modifications to Physical Plant Requirements . . . . .	46
<b>X.</b>	<b>Pets . . . . .</b>	<b>46</b>
<b>XI.</b>	<b>Resident Funds and Property . . . . .</b>	<b>47</b>
<b>XII.</b>	<b>Secure Residential Recovery . . . . .</b>	<b>48</b>

## **I. General Provisions**

### 1.1 Introduction

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

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

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

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

### 1.2 Statutory Authority

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

### 1.3 Statement of Intent

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

### 1.4 Exception and Severability

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



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

#### 1.5 Taxes

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

#### 1.6 Material Misstatements

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

#### 1.7 Appeals

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

### **II. Definitions**

#### 2.1 General Definitions

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

#### 2.2 Specific Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **III. Variances**

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

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

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

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

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

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

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

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

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

### **IV. Licensing Procedures**

4.1 Application

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

(b) In addition, such person shall:

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

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

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

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

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

#### 4.2 Review Process

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

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

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

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

#### 4.3 Denial of Application

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

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

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

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

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

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

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

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

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

#### 4.4 Re-application

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

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

#### 4.5 Expiration

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

#### 4.6 Change in Licensed Capacity

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

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

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

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



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

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

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

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

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

#### 4.7 Temporary License

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

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

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

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

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

#### 4.8 Change in Status

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

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

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

#### 4.9 Separate License

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

#### 4.10 Transfer Prohibited

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

#### 4.11 License Certificate

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

#### 4.12 Responsibility and Authority

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

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

(c) The manager shall 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 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 be fully authorized to take necessary action to meet those needs or shall be able to contact the manager immediately if necessary.

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

- (1) At least an Associates Degree in the area of human services; or
- (2) Three (3) years of general experience in a human services-related field.

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

#### 4.13 Survey/Investigation

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

- (1) Authorized staff of the licensing agency shall have access to the residence at all times, with or without notice.
- (2) The living quarters of the manager of a residence may be subject to inspection only where the inspector has reason to believe the licensed capacity of the residence has been exceeded and only for the purpose of determining if such a

violation exists. The inspector shall permit the manager to accompany him or her on such an inspection.

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

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

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

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

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

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

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

#### 4.14 Violations: Notice Procedure

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

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

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

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

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

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

#### 4.15 Enforcement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 4.16 Identification of Unlicensed Residences

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

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

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

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

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

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

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

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

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

#### 4.17 Additional Required Program Components

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

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

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

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

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

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

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

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

i. Staff qualifications;

ii. Orientation;



iii. In-service education and specialized training; and

iv. Medical management and credentialing as necessary.

(c) All therapeutic community residences shall either:

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

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

*i.* Structural Components:

Governing Authority  
Direction or Supervision  
Staff  
Fiscal Management

*ii.* Treatment Components

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

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

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

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

### **5.1 Eligibility**

(a) The licensee shall not accept or retain as a resident any individual who meets level of care eligibility for nursing home admission, or who otherwise has care needs which exceed what the

residence is able to safely and appropriately provide, unless prior approval has been obtained from the licensing agency.

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

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

## 5.2 Admission Agreements

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

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

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

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

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

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

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

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

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

### 5.3 Intake

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

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

(1) Early history in brief summary;

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

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

(4) Review of specific substance abuse if applicable.

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

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

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

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

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

#### 5.4 Discharge Requirements

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

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

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

#### 5.5 General Care

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

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

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

#### 5.6 Health Care Provider Services

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

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

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

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

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

#### 5.7 Treatment Plan

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

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

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

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

#### 5.8 Medication Management

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

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

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

(3) Qualifications of the staff who will be managing medications or administering medications and the residence's process for nursing supervision of the staff.

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

(5) Procedures for documentation of medication administration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Signs, symptoms and likely side effects to be aware of for any medication a resident receives.

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

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

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

(1) Documentation that medications were administered as ordered;

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

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

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

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

(6) All incidents of medication errors.

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



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

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

(3) Residents who are capable of self-administration may choose to store their own medications provided that the residence is able to provide the resident with a secure storage space to prevent unauthorized access to the resident's medications. Whether or not the residence is able to provide such a secured space must be explained to the resident on or before admission.

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

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

## 5.9 Staff Services

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

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

(1) Resident rights;

(2) Fire safety and emergency evacuation;

(3) Resident emergency response procedures, such as the Heimlich maneuver, accidents, police or ambulance contact and first aid;

(4) Policies and procedures regarding mandatory reports of abuse, neglect and exploitation;

(5) Respectful and effective interaction with residents;

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

(7) General supervision and care of residents.

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

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

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

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

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

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

#### 5.10 Records/Reports

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

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

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

(2) A record for each resident which includes:

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

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

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

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

*v.* Data from other agencies;

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

*vii.* A signed admission agreement;

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

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

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

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

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

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

iv. Whenever possible residents should be encouraged to contribute to their own progress notes.

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

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

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

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

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

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

*i.* The name of resident;

*ii.* The circumstances of the death;

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

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

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

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

#### 5.11 First Aid Equipment and Supplies

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

## 5.12 Resident Services

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

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

## 5.13 Policies and Procedures

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

## 5.14 Transportation

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

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

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

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

## 5.15 Death of a Resident

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

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

## 5.16 Reporting of Abuse, Neglect or Exploitation

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

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

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

## 5.17 Access by Advocacy System.

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

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

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

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

## **VI. Residents' Rights**

6.1 Every resident shall be treated with consideration, respect and full recognition of the resident's dignity, individuality, and privacy. A

residence may not ask a resident to waive the resident's rights. A resident has the right to exercise any rights without reprisal.

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

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

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

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

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

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

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

6.9 Residents may manage their own personal finances unless a representative payee or financial guardian has been appointed. The residence or licensee shall not manage a resident's finances unless requested in writing by the resident and then in accordance with the

resident's wishes. The residence or licensee shall keep a record of all transactions and make the record available, upon request, to the resident or legal representative, and shall provide the resident with an accounting of all transactions at least quarterly. Resident funds must be kept separate from other accounts or funds of the residence.

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

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

6.12 Residents shall be free from mental, verbal or physical abuse, neglect, and exploitation. Residents shall also be free from seclusion or restraints. All residents have the right to be free from corporal punishment. All residents have the right to be free from restraint or seclusion, of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff. Psychoactive drugs shall not be administered involuntarily.

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

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

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

(b) Receive adequate notice of a pending transfer.

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

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

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



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

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

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

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

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

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

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

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

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

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

6.25 Residents have the right to vote.

6.26 Residents with limited English proficiency have the right to have oral or written translation or interpretive services and cannot be required to pay for such services.

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

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

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

### 7.1 Food Services

#### (a) Menus and Nutritional Standards

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

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

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

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

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

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

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

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

(b) Meal Planning Guidelines

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

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

(c) Meal Service

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

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

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

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

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

## 7.2 Food Safety and Sanitation

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

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

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

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

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

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

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

### 7.3 Food Storage and Equipment

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

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

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

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

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

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

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

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

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

#### **VIII. Laundry Services**

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

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

8.3 The residence shall make alternate arrangements for the personal laundry of a resident if the resident is incapable of doing his or her own laundry.

#### **IX. Physical Plant**

##### 9.1 Environment

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

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

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

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

##### 9.2 Residents' Rooms

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

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

(c) Each bedroom shall have an outside window.

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

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

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

(e) Resident bedrooms shall be used only as the personal sleeping and living quarters of the residents assigned to them. Halls, storerooms or unfinished attic rooms shall not be used as bedrooms, except in emergency situations on a temporary basis, not to exceed 72 hours.

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

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

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

(i) Each resident shall be provided adequate space to accommodate his or her clothing and personal needs.

### 9.3 Toilet, Bathing and Lavatory Facilities

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

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

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

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

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

### 9.4 Recreation and Dining Rooms

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

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

(c) Dining rooms shall be of sufficient size to seat and serve all residents of the residence at the same time.

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

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

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

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

#### 9.6 Plumbing

(a) All plumbing shall 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 operate properly and be maintained in good repair.

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

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

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

#### 9.7 Water Supply

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

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

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

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

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

#### 9.8 Heating

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

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

#### 9.9 Ventilation

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

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

#### 9.10 Life Safety/Building Construction

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

#### 9.11 Disaster and Emergency Preparedness

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

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

(c) Each residence shall have in effect, and available to staff and residents, written copies of a plan for the protection of all persons in the event of fire and for the evacuation of the building when necessary. All staff shall 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.



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

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

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

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

## **X. Pets**

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

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

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

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

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

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

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

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

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

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

(f) The residence 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, attorney in fact (power of attorney), a representative payee who requests otherwise, or where the resident is in a secure residential recovery facility. The residence may manage the resident's finances only upon the written request of the resident. There shall be a written agreement stating the assistance requested, the terms of same, the funds or property and persons involved.

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

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

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

11.5 If it becomes apparent that a resident is no longer capable of managing funds or property, the licensee shall 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 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 three (3) months. At the conclusion of this period, the property shall be transferred to the governing body of the city or town.

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

(a) The 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 residence. 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 residence and other such items.

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

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

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

The legislature has authorized the Commissioner of Mental Health to establish and oversee a secure residential recovery facility owned and operated by the state for individuals who no longer require acute inpatient care, but who remain in need of treatment within a secure setting for an extended period of time. The program shall be the least restrictive and most integrated setting for each of the individual residents.

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

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

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

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

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

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

12.5 A request for approval to operate a secure residential recovery facility as described in 2012 Acts and Resolves No. 160 shall include all of the following:

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

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

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

(b) "Secure residential recovery facility" means a residential facility, licensed as a therapeutic community residence as defined in 33 V.S. A. § 7102 (11), for an individual who has reached a level of psychiatric stability and no longer requires acute inpatient care but who does remain in need of treatment as set forth at 18 V. S. A. § 7101 within a secure setting for an extended period of time.

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

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

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

as well as the relationship to any other health care or educational institutions involved in the resident's care.

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

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

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

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

(g) The right to refuse medications and specific treatments; however, refusal of court ordered medications or treatments may terminate a resident's right to receive services at a secure residential recovery facility. Psychoactive drugs shall not be administered involuntarily.

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

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

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

Commissioner, Vermont Department of Mental Health  
280 State Drive  
Waterbury, Vermont 05671-0701 (802) 241-0701

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LICENSING AND OPERATING  
REGULATIONS FOR  
THERAPEUTIC COMMUNITY  
RESIDENCES

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

Effective: January 6, 2014

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



TABLE OF CONTENTS

<b>I.</b>	<b>General Provisions</b>	1
1.1	Introduction	1
1.2	Statutory Authority	1
1.3	Statement of Intent	1
1.4	Exception and Severability	2
1.5	Taxes	2
1.6	Material Misstatements	2
1.7	Appeals	2
<b>II.</b>	<b>Definitions</b>	2
2.1	General Definitions	2
2.2	Specific Definitions	2
<b>III.</b>	<b>Variances</b>	7
<b>IV.</b>	<b>Licensing Procedures</b>	8
4.1	Application	8
4.2	Review Process	8
4.3	Denial of Application	9
4.4	Re-application	9
4.5	Expiration	10
4.6	Change in Licensed Capacity	10
4.7	Temporary License	11
4.8	Change in Status	11
4.9	Separate License	12
4.10	Transfer Prohibited	12
4.11	License Certificate	12
4.12	Responsibility and Authority	12
4.13	Survey/Investigation	13
4.14	Violations: Notice Procedure	15
4.15	Enforcement	16
4.16	Identification of Unlicensed Residences	17
4.17	Additional Required Program Components	18
<b>V.</b>	<b>Resident Care and Services</b>	20
5.1	Eligibility	20
5.2	Admission Agreements	20
5.3	Intake	22
5.4	Discharge Requirements	22
5.5	General Care	23
5.6	Health Care Provider Services	23
5.7	Treatment Plan	24

5.8	Medication Management . . . . .	24
5.9	Staff Services . . . . .	28
5.10	Records/Reports . . . . .	30
5.11	First Aid Equipment and Supplies . . . . .	32
5.12	Resident Services . . . . .	32
5.13	Policies and Procedures . . . . .	33
5.14	Transportation . . . . .	33
5.15	Death of a Resident . . . . .	33
5.16	Reporting of Abuse, Neglect or Exploitation . . . . .	33
5.17	Access by Advocacy System . . . . .	34
<b>VI.</b>	<b>Residents' Rights . . . . .</b>	<b>34</b>
<b>VII.</b>	<b>Nutrition and Food Services . . . . .</b>	<b>38</b>
7.1	Food Services . . . . .	38
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 . . . . .	43
9.4	Recreation and Dining Rooms . . . . .	43
9.5	Residence Requirements for Persons with Disabilities . . . . .	43
9.6	Plumbing . . . . .	44
9.7	Water Supply . . . . .	44
9.8	Heating . . . . .	44
9.9	Ventilation . . . . .	45
9.10	Life Safety/Building Construction . . . . .	45
9.11	Disaster and Emergency Preparedness . . . . .	45
9.12	Modifications to Physical Plant Requirements . . . . .	46
<b>X.</b>	<b>Pets . . . . .</b>	<b>46</b>
<b>XI.</b>	<b>Resident Funds and Property . . . . .</b>	<b>47</b>
<b>XII.</b>	<b>Secure Residential Recovery . . . . .</b>	<b>48</b>

## **I. General Provisions**

### 1.1 Introduction

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

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

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

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

### 1.2 Statutory Authority

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

### 1.3 Statement of Intent

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

### 1.4 Exception and Severability

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

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

#### 1.5 Taxes

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

#### 1.6 Material Misstatements

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

#### 1.7 Appeals

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

### **II. Definitions**

#### 2.1 General Definitions

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

#### 2.2 Specific Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(~~tuu~~) "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.

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

### **III. Variances**

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

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

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

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

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

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

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

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

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

### **IV. Licensing Procedures**

4.1 Application

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

(b) In addition, such person shall:

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

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

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

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

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

#### 4.2 Review Process

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

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

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

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

#### 4.3 Denial of Application

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

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

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

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

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

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

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

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

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

#### 4.4 Re-application

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

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

#### 4.5 Expiration

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

#### 4.6 Change in Licensed Capacity

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

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

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

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

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

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

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

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

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

#### 4.7 Temporary License

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

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

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

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

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

#### 4.8 Change in Status

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

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

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

#### 4.9 Separate License

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

#### 4.10 Transfer Prohibited

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

#### 4.11 License Certificate

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

#### 4.12 Responsibility and Authority

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

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

(c) The manager shall 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 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 be fully authorized to take necessary action to meet those needs or shall be able to contact the manager immediately if necessary.

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

- (1) At least an Associates Degree in the area of human services; or
- (2) Three (3) years of general experience in a human services-related field.

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

#### 4.13 Survey/Investigation

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

- (1) Authorized staff of the licensing agency shall have access to the residence at all times, with or without notice.
- (2) The living quarters of the manager of a residence may be subject to inspection only where the inspector has reason to believe the licensed capacity of the residence has been exceeded and only for the purpose of determining if such a

violation exists. The inspector shall permit the manager to accompany him or her on such an inspection.

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

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

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

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

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

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

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

#### 4.14 Violations: Notice Procedure

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

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

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

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

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



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

#### 4.15 Enforcement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 4.16 Identification of Unlicensed Residences

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

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

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

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

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

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

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

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

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

#### 4.17 Additional Required Program Components

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

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

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

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

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

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

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

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

i. Staff qualifications;

ii. Orientation;

iii. In-service education and specialized training; and

iv. Medical management and credentialing as necessary.

(c) All therapeutic community residences shall either:

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

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

*i.* Structural Components:

Governing Authority  
Direction or Supervision  
Staff  
Fiscal Management

*ii.* Treatment Components

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

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

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

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

### **5.1 Eligibility**

(a) The licensee shall not accept or retain as a resident any individual who meets level of care eligibility for nursing home admission, or who otherwise has care needs which exceed what the

residence is able to safely and appropriately provide, unless prior approval has been obtained from the licensing agency.

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

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

## 5.2 Admission Agreements

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

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

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

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

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

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

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

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

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

### 5.3 Intake

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

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

(1) Early history in brief summary;

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

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

(4) Review of specific substance abuse if applicable.

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

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

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

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

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

#### 5.4 Discharge Requirements

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

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

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

#### 5.5 General Care

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

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

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

#### 5.6 Health Care Provider Services

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

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

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

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

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

#### 5.7 Treatment Plan

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

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

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

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

#### 5.8 Medication Management

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

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



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

(3) Qualifications of the staff who will be managing medications or administering medications and the residence's process for nursing supervision of the staff.

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

(5) Procedures for documentation of medication administration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Signs, symptoms and likely side effects to be aware of for any medication a resident receives.

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

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

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

(1) Documentation that medications were administered as ordered;

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

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

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

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

(6) All incidents of medication errors.

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

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

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

(3) Residents who are capable of self-administration may choose to store their own medications provided that the residence is able to provide the resident with a secure storage space to prevent unauthorized access to the resident's medications. Whether or not the residence is able to provide such a secured space must be explained to the resident on or before admission.

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

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

## 5.9 Staff Services

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

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

(1) Resident rights;

(2) Fire safety and emergency evacuation;

(3) Resident emergency response procedures, such as the Heimlich maneuver, accidents, police or ambulance contact and first aid;

(4) Policies and procedures regarding mandatory reports of abuse, neglect and exploitation;

(5) Respectful and effective interaction with residents;

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

(7) General supervision and care of residents.

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

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

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

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

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

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

#### 5.10 Records/Reports

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

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

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

(2) A record for each resident which includes:

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

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

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

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

*v.* Data from other agencies;

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

*vii.* A signed admission agreement;

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

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

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

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

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

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

iv. Whenever possible residents should be encouraged to contribute to their own progress notes.

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

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

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

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

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

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

*i.* The name of resident;

*ii.* The circumstances of the death;

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

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

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

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

#### 5.11 First Aid Equipment and Supplies

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

## 5.12 Resident Services

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

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

## 5.13 Policies and Procedures

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

## 5.14 Transportation

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

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

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

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

## 5.15 Death of a Resident

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

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



## 5.16 Reporting of Abuse, Neglect or Exploitation

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

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

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

## 5.17 Access by Advocacy System.

(a) The residence shall permit representatives of Adult Protective Services, the Mental Health Ombudsman, as applicable, the patient representative, as applicable, and the designated Vermont protection and advocacy organization to have access to the residence and its residents in order to: visit; talk with; make personal, social and legal services available to all residents; inform residents of their rights and entitlement; and assist residents in resolving problems and grievances.

(b) Any designated representative of the designated Vermont protection and advocacy organization, the Mental Health Ombudsman, as applicable, and the patient representative, as applicable, shall have access to the residence at any time in accordance with that program's state and federal mandates and requirements. Those representatives shall also have access to the resident's records with the permission of the resident or as otherwise provided by state or federal law.

(c) Individual residents have the complete right to deny or terminate any visits by persons having access pursuant to this section.

(d) If a resident's room does not permit private consultation to occur, the resident may request, and the residence must provide, an appropriate place for a private meeting.

## **VI. Residents' Rights**

6.1 Every resident shall be treated with consideration, respect and full recognition of the resident's dignity, individuality, and privacy. A

residence may not ask a resident to waive the resident's rights. A resident has the right to exercise any rights without reprisal.

6.2 Each residence shall establish and adhere to a written policy, consistent with these regulations, regarding the rights and responsibilities of residents, which shall be explained to residents at the time of admission. Receipt of the rights by the resident shall be indicated by a signature and date by the resident on a line for that purpose on the admission agreement.

6.3 Residents may retain personal clothing and possessions as space permits, unless to do so would infringe on the rights of others, would create a danger to others, would create a security risk or would create a fire, health or safety hazard.

6.4 A resident shall not be required to perform work for the licensee. If a resident chooses to perform specific tasks for the licensee the resident shall receive reasonable compensation which shall be specified in a written agreement with the resident.

6.5 Each resident shall be allowed to associate, communicate and meet privately with persons of the resident's own choice, including family members, unless such access has been restricted by a court. Residences shall allow visiting hours from at least 8 a.m. to 8 p.m., or longer. Visiting hours shall be posted in a prominent public place.

6.6 Each resident may send and receive personal mail unopened, unless such access has been restricted by a court.

6.7 Residents have the right to reasonable access to a telephone for private conversations unless such access has been restricted by a court. Residents shall have reasonable access to the residence's telephone except when restricted because of excessive unpaid toll charges or misuse. Restrictions as to telephone use shall be in writing. Any resident may, at the resident's own expense, maintain a personal telephone or other electronic equipment in his or her own room, unless such access has been restricted by a court.

6.8 A resident may file a complaint or voice a grievance without interference, coercion or reprisal. Each residence shall establish an accessible written grievance procedure for resolving residents' concerns or complaints that is explained to residents at the time of admission and posted in a prominent, public place on each floor of the residence. The grievance procedure shall include at a minimum, time frames, a process for responding to residents in writing within ten (10) days, and a method by which each resident filing a complaint or grievance will be made aware of the designated Vermont protection and advocacy organization as an alternative or in addition to the residence's grievance mechanism.

6.9 Residents may manage their own personal finances unless a representative payee or financial guardian has been appointed. The residence or licensee shall not manage a resident's finances unless requested in writing by the resident and then in accordance with the

resident's wishes. The residence or licensee shall keep a record of all transactions and make the record available, upon request, to the resident or legal representative, and shall provide the resident with an accounting of all transactions at least quarterly. Resident funds must be kept separate from other accounts or funds of the residence.

6.10 The resident's right to privacy extends to all records and personal information. Personal information about a resident shall not be discussed with anyone not directly involved in the resident's care, treatment or supervision. Release of any record, excerpts from or information contained in such records shall be subject to the resident's written approval, except as requested by representatives of the licensing agency to carry out its responsibilities or as otherwise provided by law.

6.11 The resident has the right to review the resident's medical or financial records upon request. The resident has the right to provide written comments about the medical or financial record and the comments shall be made part of the resident's record at the request of the resident.

6.12 Residents shall be free from mental, verbal or physical abuse, neglect, and exploitation. Residents shall also be free from seclusion or restraints. All residents have the right to be free from corporal punishment. All residents have the right to be free from restraint or seclusion, of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff. Psychoactive drugs shall not be administered involuntarily.

6.13 When a resident is adjudicated mentally disabled, such powers as have been delegated by the Probate or Family Court to the resident's guardian shall be exercised by the guardian.

6.14 Residents notified about a pending discharge from the residence under Section 5.4 of these regulations, absent an emergency, shall:

(a) Be allowed to participate in the decision-making process of the residence concerning the selection of an alternative placement; and

(b) Receive adequate notice of a pending transfer.

6.15 Residents have the right to refuse care to the extent allowed by law.

(a) Except for residents who are prohibited from doing so by a court order, this right includes the right to discharge himself or herself from the residence.

(b) The residence must fully inform the resident of the consequences of refusing care. If the resident makes a fully informed decision to refuse care, the residence must respect that decision and is absolved of further responsibility, unless the resident is in a secure residential recovery facility and has been court-ordered to take medication or receive care.

(c) If the refusal of care will result in a resident's needs increasing beyond what the residence is licensed to provide, or will result in the residence being in violation of these regulations, the residence may issue the resident notice of discharge.

6.16 Residents have the right to fill out a document called an "advance directive" in accordance with Title 18, chapter 231 and to have the residence follow the residents' wishes, unless such wishes are contrary to a court order. The residence shall provide residents with information about advance directives and, upon request, may support a resident's efforts to complete the documents.

6.17 Residents shall have help in assuming as much responsibility for themselves and others as possible, and in participating in residence activities.

6.18 Residents shall have explained to them the reasons and risks associated with the use of any prescribed medication they are taking.

6.19 Residents shall be free to terminate their relationship to the residence.

6.20 The enumeration of residents' rights shall not be construed to limit, modify, abridge, restrict or reduce in any way any rights that a resident otherwise enjoys as a human being or citizen, unless those rights have been limited by a court.

6.21 The obligations of the residence to its residents shall be written in clear language, large print, given to residents on admission, and posted in an accessible, prominent and public place on each floor of the residence. Such notice shall also state the residence's grievance procedure and directions for contacting the designated Vermont protection and advocacy organization.

6.22 If a resident has a chronic condition, he or she has the right to receive competent and compassionate medical assistance to manage the physical and emotional symptoms of that condition.

6.23 Residents have the right to have a family member or another person of the resident's choice be notified of the admission to the residence. Residents also have the right to decline to have anyone notified of the admission. A facility may not disclose information about a resident's admission without obtaining the resident's authorization. The decision by the resident regarding notice shall be documented at the time of admission to the residence.

6.24 Residents have the right to obtain the opinion of a consultant at the resident's own expense.

6.25 Residents have the right to vote.

6.26 Residents with limited English proficiency have the right to have oral or written translation or interpretive services and cannot be required to pay for such services.

6.27 Residents have the right to have accommodations made to a disability (or disabilities) to ensure that there are no barriers to their receipt of services and that they understand the care and treatment being provided. Such accommodations shall include, but are not limited to, sign language interpretation and having documents provided in accessible formats, as applicable. The resident shall not be required to pay for these services.

6.28 Residents have the right to receive services without discrimination based on race, religion, color, gender (including pregnancy), sexual orientation, gender identity, national origin, disability or age.

## **VII. Nutrition and Food Services**

### 7.1 Food Services

#### (a) Menus and Nutritional Standards

(1) Menus for regular and therapeutic diets shall be planned and written at least one (1) week in advance.

(2) The meals served each day must provide 100% of the Dietary Reference Intakes (DRIs) and comply with the current Dietary Guidelines for Americans. DRIs are a set of nutrient-based reference values that expand upon and replace the former Recommended Dietary Allowances (RDAs) in the United States. They include: acceptable macronutrient distribution range (AMDR); adequate intake (AI); estimated average requirement (EAR); recommended dietary allowance (RDA) and tolerable upper intake level (UI). Dietary Guidelines for Americans were developed by the U.S. Department of Agriculture and the U.S. Department of Health and Human Services.

(3) The current week's regular and therapeutic menu shall be posted in a prominent public place for residents and other interested parties.

(4) The residence must follow the written, posted menus. If a substitution must be made, the substitution shall be recorded on the written menu.

(5) The residence shall keep menus, including any substitutions, for the previous month on file and available for examination by the licensing agency.

(6) There shall be a written order in the resident's record for all therapeutic diets.

(7) The residence shall maintain sufficient food supplies at hand on the premises to meet the requirements of the planned weekly menus as well as for unseen emergencies.

(8) No more than fourteen (14) hours shall elapse between the end of an evening meal and the morning meal unless a resident specifically requests an alternative meal schedule.

(b) Meal Planning Guidelines

(1) The residence shall follow the current U.S. Department of Agriculture (USDA) Food Patterns.

(2) The residence shall consider each resident's dietary needs with respect health status, age, gender and activity level, particularly with regard to portion sizes and frequency of meals and snacks. In taking these factors into consideration, overall nutrient intake shall not be compromised.

(c) Meal Service

(1) Each residence shall offer meals three times a day in accordance with the guide (above). Meals shall be served at appropriate temperature and at normal meal hours. Texture modifications will be accommodated as needed.

(2) Meals shall be attractively served, family style wherever possible, and shall be appropriate to individual needs as determined by age, activity, physical condition and personal preference.

(3) A range of drinks and snacks shall be available to residents at all times to meet individual needs.

(4) Meal times shall be relaxed, unhurried and flexible to suit resident activities and schedules.

(5) Residents shall be provided with alternatives to the planned meal upon request.

## 7.2 Food Safety and Sanitation

(a) Each residence must procure food from sources that comply with all laws relating to food and food labeling. Food must be safe for human consumption, free of spoilage, filth or other contamination. All milk products served and used in food preparation must be pasteurized. Cans with dents, swelling, rust, missing labels or leaks shall be rejected and kept separate until returned to the supplier.

(b) All perishable food and drink shall be labeled, dated and held at proper temperatures. Hot foods shall be kept hot at 135° F and cold foods shall be kept cold at 41° F or cooler.

(c) All work surfaces must be cleaned and sanitized after each use. Equipment and utensils must be cleaned and sanitized after each use and stored properly.

(d) The residence shall ensure that food handling and storage techniques are consistent with the Food Safety Principles and Guidance for Consumers in the current Dietary Guidelines for Americans.

(e) The use of outdated, unlabeled or damaged canned goods is prohibited and such goods shall not be maintained on the premises.

(f) The residence and premises shall be maintained in a sanitary condition.

(g) All garbage, trash, and other waste materials shall be removed from the premises and disposed of in an acceptable manner at least once per week, preferably daily.

### 7.3 Food Storage and Equipment

(a) All food and drink shall be stored so as to protect from dust, insects, rodents, overhead leakage, unnecessary handling and all other sources of contamination.

(b) Areas of the residence used for storage of food, drink, equipment or utensils shall be constructed to be easily cleaned and shall be kept clean.

(c) All food service equipment shall be kept clean, sanitized and maintained according to manufacturer's guidelines.

(d) All equipment, utensils and dinnerware shall be in good repair. Cracked or badly chipped dishes and glassware shall not be used.

(e) Single service items, such as paper cups, plates and straws, shall be used only once. They shall be purchased and stored in sanitary packages or containers in a clean dry place and handled in a sanitary manner.

(f) Food service areas shall not be used to empty bed pans or urinals or as access to toilet and utility rooms. If soiled linen is transported through food service areas, the linen must be in an impervious container.

(g) Doors, windows and other openings to the outdoors shall be screened against insects, as required by seasonal conditions.

(h) All garbage shall be collected and stored to prevent the transmission of contagious diseases, creation of a nuisance, or the breeding of insects and rodents, and shall be disposed of at least weekly. Garbage or trash in the kitchen area must be placed in lined containers with covers. Garbage containers shall be kept clean and sanitized.

(i) Poisonous compounds (such as cleaning products and insecticides) shall be labeled for easy identification and shall not be stored in the food storage area unless they are stored in a separate, locked compartment within the food storage area.

### **VIII. Laundry Services**

8.1 The residence shall provide laundered bed and bath linens at least once a week.

8.2 The residence shall provide adequate opportunity to residents to do their laundry.

8.3 The residence shall make alternate arrangements for the personal laundry of a resident if the resident is incapable of doing his or her own laundry.

### **IX. Physical Plant**

#### 9.1 Environment

(a) The residence must provide and maintain a safe, functional, sanitary, homelike and comfortable environment.

(b) All residences shall comply with all current applicable state and local rules, regulations, codes and ordinances. Where there is a difference between codes, the code with the higher standard shall apply.

(c) A residence may not install a door security system that prevents residents from readily exiting the building without prior approval of the licensing agency.

(d) A residence shall ensure that residents have access to the outdoors.

#### 9.2 Residents' Rooms

(a) Each bedroom shall provide a minimum of 100 square feet per bed.

(b) Rooms shall be of dimensions that allow for the potential of not less than three (3) feet between beds.

(c) Each bedroom shall have an outside window.

(1) Windows shall be able to be opened and screened except in construction containing approved mechanical air circulation and ventilation equipment.

(2) Window shades, venetian blinds or curtains shall be provided to control natural light and offer privacy.

(d) The door opening of each bedroom shall be fitted with a full-size door of solid core construction.



(e) Resident bedrooms shall be used only as the personal sleeping and living quarters of the residents assigned to them. Halls, storerooms or unfinished attic rooms shall not be used as bedrooms, except in emergency situations on a temporary basis, not to exceed 72 hours.

(f) A resident shall not have to pass through another bedroom or bathroom to reach the resident's own bedroom.

(g) Each resident shall be provided with his or her own bed which shall be a standard-size full or twin bed. Roll away beds, cots and folding beds shall not be used. A resident who wishes to bring his or her own bed or other furniture may do so, as space permits, if the furniture is in safe and sanitary condition.

(h) Each bed shall be in good repair, with a clean, comfortable mattress that is at least six (6) inches thick, and standard in size for the particular bed, a pillow, bed covering, and a minimum of one (1) blanket, two (2) sheets, and one (1) pillowcase.

(i) Each resident shall be provided adequate space to accommodate his or her clothing and personal needs.

### 9.3 Toilet, Bathing and Lavatory Facilities

(a) Toilet, lavatories and bathing areas shall be equipped with grab bars for the safety of the residents. There shall be at least one (1) full bathroom that meets the requirements of the Americans with Disabilities Act of 1990, as amended, and state building accessibility requirements as enforced by the Department of Public Safety.

(b) There shall be a minimum of one (1) bath unit, toilet and lavatory sink, exclusively available to residents, per eight (8) licensed beds per floor. Licensed beds having private lavatory facilities are not included in this ratio.

(c) Each lavatory sink shall be at least of standard size and shall be equipped with hot and cold running water, soap, and, if used by multiple residents, paper towels.

(d) Each bathtub and shower shall be constructed and enclosed so as to ensure adequate space and privacy while in use.

(e) Resident lavatories and toilets shall not be used as utility rooms.

### 9.4 Recreation and Dining Rooms

(a) All residences shall provide at least one (1) well-lighted and ventilated living or recreational room and dining room for the use of residents.

(b) Combination dining and recreational rooms are acceptable but must be large enough to serve a dual function.

(c) Dining rooms shall be of sufficient size to seat and serve all residents of the residence at the same time.

(d) Smoking shall not be permitted inside the building.

#### 9.5 Residence Requirements for Persons with Physical Disabilities

(a) Each residence shall be accessible to and functional for residents, personnel and members of the public with physical disabilities in compliance with the Americans with Disabilities Act of 1990, as amended.

(b) Residents who are blind or have mobility impairments shall not be housed above the first floor unless the residence is in compliance with all applicable codes, regulations and laws as required by the Department of Public Safety.

#### 9.6 Plumbing

(a) All plumbing shall 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 operate properly and be maintained in good repair.

(b) Plumbing and drainage for the disposal of sewage, infectious discharge, household and institutional wastes shall comply with all State and Federal regulations.

(c) All plumbing fixtures shall be clean and free from cracks, breaks and leaks.

(d) Hot water temperatures shall not exceed 120 degrees Fahrenheit in resident areas.

#### 9.7 Water Supply

(a) Each residence shall be connected to an approved public water supply when available and where said supply is in compliance with the Department of Health's public water system regulations.

(b) If a residence uses a private water supply, said supply shall conform to the construction, operation and sanitation standards published by the Department of Health. Private water supplies shall be tested annually for contamination, and copies of results shall be kept on premises.

(c) Water shall be distributed to conveniently located taps and fixtures throughout the building and shall be adequate in temperature, volume and pressure for all purposes, including fire fighting if there is a residential sprinkler system.

(d) In no case shall water from lead pipes be used for drinking or cooking.

(e) The sewage system shall provide sufficient capacity to meet the sanitary needs of the residence at all times.

#### 9.8 Heating

(a) Each residence shall be equipped with a heating system which is of sufficient size and capability to maintain all areas of the residence used by residents and which complies with applicable fire and safety regulations.

(b) The minimum temperature shall be maintained at an ambient temperature of 70 degrees Fahrenheit in all areas of the residence utilized by residents and staff during all weather conditions.

#### 9.9 Ventilation

(a) Residences shall be adequately ventilated to provide fresh air and shall be kept free from smoke and objectionable odors. The residence shall provide good ventilation for comfort and safety.

(b) Kitchens, laundries, toilet rooms, bathrooms, and utility rooms shall be ventilated to the outside by window or by ventilating duct and fan of sufficient size.

#### 9.10 Life Safety/Building Construction

All residences shall meet all of the applicable fire safety and building requirements of the Department of Public Safety, Division of Fire Safety.

#### 9.11 Disaster and Emergency Preparedness

(a) The licensee or manager of each residence shall maintain a written disaster preparedness plan. The plan shall outline procedures to be followed in the event of any emergency potentially necessitating the evacuation of residents, including but not limited to: fire, flood, loss of heat or power, or threat to the residence.

(b) If the residence is located within ten (10) miles of a nuclear power plant, the plan shall include specific measures for the protection, treatment and removal of residents in the event of a nuclear disaster.

(c) Each residence shall have in effect, and available to staff and residents, written copies of a plan for the protection of all persons in the event of fire and for the evacuation of the building when necessary. All staff shall 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.

(d) There shall be an operable telephone on each floor of the residence, at all times. A list of emergency telephone numbers shall be posted by each telephone.

(e) The residence shall arrange appropriate medical or psychiatric care for residents in emergency situations.

(f) The residence shall ensure that adequate staff is available at all times to assist residents to evacuate in an emergency situation.

9.12 When necessary to ensure resident safety, modifications shall be made to the physical plant requirements set forth in this section, with the prior written approval of the licensing agency.

## **X. Pets**

10.1 A residence may permit pets to visit the residence providing the following conditions are met:

(a) The pet owner must provide evidence of current vaccinations.

(b) The pet must be clean, properly groomed and healthy.

(c) The pet owner is responsible for the pet's behavior and shall maintain control of the pet at all times.

10.2 Pets, owned by a resident or the residence, may reside in the residence providing the following conditions are met:

(a) The residence shall ensure that the presence of a pet causes no discomfort to any resident.

(b) The residence shall ensure that pet behavior poses no risk to residents, staff or visitors.

(c) The residence must have procedures to ensure that pets are kept under control, fed, watered, exercised and kept clean and well-groomed and that they are cleaned up after.

(d) Pets must be free from disease including leukemia, heartworm, hepatitis, leptos psoriasis, parvo, worms, fleas, ticks, ear mites, and skin disorders, and must be current at all times with rabies and distemper vaccinations.

(e) Pet health records shall be maintained by the residence and made available to the public.

(f) The residence 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, attorney in fact (power of attorney), a representative payee who requests otherwise, or where the resident is in a secure residential recovery facility. The residence may manage the resident's finances only upon the written request of the resident. There shall be a written agreement stating the assistance requested, the terms of same, the funds or property and persons involved.

11.2 If the residence manages the resident's finances, the residence must keep a record of all transactions, provide the resident with a quarterly statement, and keep all resident funds separate from the residence or licensee's funds.

11.3 The residence shall have policies in place to protect residents' personal property when not in use.

11.4 The resident shall not be solicited for gifts or other consideration by persons connected with the residence, in any way.

11.5 If it becomes apparent that a resident is no longer capable of managing funds or property, the licensee shall 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 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 three (3) months. At the conclusion of this period, the property shall be transferred to the governing body of the city or town.

11.7 Each residence shall develop and implement a written policy regarding residents' personal needs. The policy shall be explained to the resident upon admission, with a copy provided to the resident at that time.

(a) The 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 residence. 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 residence and other such items.

11.8 The licensee, the licensee's relative or any staff member shall not be the legal guardian, trustee or legal representative for any resident other than a relative. The licensee or any staff of the residence is permitted to act as the resident's representative payee according to Social Security regulations provided the resident or the resident's legal representative agrees in writing to this arrangement and all other provisions of these regulations related to money management are met.

11.9 No licensee, staff or other employee of the residence may solicit, offer or receive a gift, including money or gratuities, from a resident. Nominal gifts, such as candy or flowers that can be enjoyed by all staff, are permissible.

## **XII. Secure Residential Recovery Facility**

~~In 2012, the~~The legislature has authorized the Commissioner of ~~the Department of~~ Mental Health to establish and oversee a secure ~~seven-bed~~ residential recovery facility owned and operated by the state for individuals who no longer require ~~ing~~ acute inpatient care, but who remain in need of treatment within a secure setting for an extended period of time. The program shall be the least restrictive and most integrated setting for each of the individual residents.

12.1 To obtain and maintain a license to operate a secure residential recovery facility, an applicant or licensee must meet all of the requirements of the Therapeutic Community Residence Licensing Regulations.

12.2 The Department of Mental Health shall obtain approval from the licensing agency prior to operating a secure residential recovery facility, which shall be licensed as a therapeutic community residence.

12.3 Subject to prior approval by the licensing agency, certain modifications to the licensing requirements may be made in order to ensure the safety of the resident or residents. Safety modifications may be made in the physical plant as noted in 9.12. In addition, the modifications may limit the resident's right to:

- (a) Bring personal furniture to the residence;
- (b) Terminate the relationship with the residence;
- (c) Purchase and self-administer over-the-counter or other medications;
- (d) Refuse to have a photo on file;
- (e) Have visitors; however, a resident's clergy or attorney at law shall be admitted to visit at all reasonable times; and
- (f) Have or use electronic equipment, including telephones, cell phones and computers.

12.4 The residence shall be inspected by the licensing agency to determine if the facility is providing the services, staffing, training and physical environment that were outlined in the request for approval.

- (a) A residence may not install a door security system which prevents residents from readily exiting the building without prior approval of the licensing agency.

12.5 A request for approval to operate a secure residential recovery facility as described in 2012 Acts and Resolves ~~No. 79 and~~ No. 160 shall include all of the following:

- (a) A statement outlining the purpose and scope of services to be provided;
- (b) A definition of the characteristics of residents to be served;
- (c) A description and identification of the physical environment;
- (d) The criteria for admission, continued stay and discharge; and
- (e) A description of unit staffing, which shall include:
  - (1) Staff qualifications and credentials, if \_\_\_\_\_ applicable;
  - (2) Orientation;
  - (3) In-service education and specialized training; and
  - (4) Medical management as necessary.

12.6 In addition to the definitions set forth in Section II, above, the following definitions shall apply in a secure residential recovery facility:

(a) "Secure" means, when describing a residential facility, that the residents can be physically prevented from leaving the facility by means of locking devices or other mechanical or physical mechanisms.

(b) "Secure residential recovery facility" means a residential facility, licensed as a therapeutic community residence as defined in 33 V.S. A. § 7102 (11), for an individual who has reached a level of psychiatric stability and no longer requires acute inpatient care but who does remain in need of treatment as set forth at 18 V. S. A. § 7101 within a secure setting for an extended period of time.

12.7 In addition to the rights set forth in Section VI. above, residents in a secure residential recovery facility shall have the following rights:

(a) The right to receive care in a safe setting and to be free from all forms of abuse ~~or harassment~~.

(b) The right to an attending physician, who shall be responsible for coordinating the resident's care and explaining the diagnosis, possible treatment, expected outcomes, and continuing health care needs to the resident or his or her ~~designated~~ legal representative. The right to know the identity and professional status of individuals participating in the resident's care, including the right to know of the existence of any professional relationship among individuals who are providing

treatment, as well as the relationship to any other health care or educational institutions involved in the resident's care.

(c) The right to make informed decisions about care without coercion and to be provided with an explanation of health status and prognosis, the objectives of treatment, the nature and significant possible adverse effects of recommended treatments and the reasons why a particular treatment is appropriate.

(d) The right to take part in the development and implementation of the plan of care and the right to request treatment ~~it~~; but however, the treatment will not be provided if it is unnecessary or inappropriate.

(e) The right to be informed of all evidence-based options for care and treatment, including palliative care, in order to make a fully informed resident choice. If the resident has a terminal illness, he or she has the right to be informed by a clinician of all available options related to terminal care, to be able to request any, all, or none of the options, and to expect to receive supportive care for the specific option or options available.

(f) The right, except as otherwise allowed by law, to expect that information relating to treatment as well as treatment records will be kept private and confidential. ~~This~~ Treatment information and related records may, however, be used without a resident's permission in any court hearings concerning involuntary treatment. For additional details about potential limitations to confidentiality of medical records, residents should refer to the Notice of Privacy Rights.

(g) The right to refuse medications and specific treatments; however, refusal of court ordered medications or treatments may terminate a resident's right to receive services at a secure residential recovery facility. Psychoactive drugs shall not be administered involuntarily.

(h) The right to a judicial review of the placement in the facility and to be represented at the hearing by a court-appointed lawyer, free of charge. The lawyer or legal representative, as defined at 2.2 (n), above, shall have reasonable access to the resident and the facility.

(i) The right to complain or file a grievance about any aspect of the resident's care and treatment. In addition to the rights in section 6.8 above, complaints may be made orally or in writing to any member of the resident's treatment team. If the resident needs help filing a complaint, he or she may request assistance from a staff member. The resident also can seek free and confidential assistance from the designated Vermont protection and advocacy organization by calling (800) 834-7890. If the resident is not satisfied with the decision, he or she may appeal, as described in the facility's Complaint Policy.

(1) A resident has a right to lodge a complaint directly     with the Department of Mental Health by contacting:



Commissioner, Vermont Department of Mental Health  
~~26 Terrace Street, Redstone Building~~ 280 State Drive  
~~Montpelier VT 05602 (802) 828-3867~~ Waterbury, Vermont  
05671-0701 (802) 241-0701

(2) A resident may file a complaint with the following  
\_\_\_\_\_ entities:

Medical Practice & Hospital Licensing Board  
Vermont Department of Health  
~~P.O. Box 70108 Cherry Street~~  
Burlington, Vermont 05402-~~0070~~  
(802) 657-4220 863-7200, (800) 745-7371 464-4343.

Department of Disabilities, Aging and Independent  
Living, Division of Licensing & Protection  
~~103 South Main Street~~ 280 State Drive - HC 2 South  
Waterbury, Vermont 05671-~~2306~~ 2060 (mailing address)

or

Adult Protective Services  
~~103 South Main Street~~ 280 State Drive - HC 2 South  
Waterbury, Vermont 05671-~~2306~~ 2060 (mailing address)  
802-~~871-3333~~ 241-0342 or toll-free at 1-800-564-1612

*The Department of Disabilities, Aging and Independent Living is the state agency responsible for licensing and \_\_\_\_\_ regulating therapeutic community residences and for \_\_\_\_\_ investigating complaints about abuse, neglect or \_\_\_\_\_ exploitation.*

(3) A resident may file a complaint with the designated \_\_\_\_\_ patient representative;

(4) A resident may file a complaint with the designated \_\_\_\_\_ Vermont protection and advocacy organization; and

(5) A resident may file a complaint with the Mental Health  
\_\_\_\_\_ Ombudsman.

(j) The right to request a hearing before a judge to determine whether the involuntary commitment is legal. This is called a right of *habeas corpus*.

(k) The resident has the right to withdraw his or her consent to receive visitors. The facility's Resident-Handbook and Visitors' Policy shall contain the specifics of resident visitation rights.

(l) The right to treatment under conditions that are most supportive of the resident's personal privacy and the right to talk with others privately. The resident's doctor may limit these rights only if necessary to protect the resident's safety or the safety of others.

(m) The right to sell or otherwise dispose of property, and to carry out business dealings.

(n) The right to refuse to participate in any research project or clinical training program.

(o) The right to receive an itemized, detailed, and understandable explanation of the charges incurred in treatment, regardless of the source of payment.

(p) The right to receive professional assessment of pain and professional pain management.

(q) The right to be informed in writing of the availability of hospice services and the eligibility criteria for those services. Whenever possible, agents, guardians, reciprocal beneficiaries, or immediate family members have the right to stay with terminally ill residents 24 hours a day.

(r) The right to expect that within its capacity, the facility shall respond reasonably to a resident's request for services. The right shall include, if physically possible, a transfer to another room or place if another person in that room or place is disturbing the resident. When medically permissible, a resident may be transferred to another facility only after receiving complete information and explanation concerning the needs for and alternatives to such a transfer. The institution to which a resident is transferred must first have accepted the resident for transfer.

(s) The right to expect reasonable continuity of care and to be informed of any continuing health care requirements following discharge.

(t) The right to know the maximum resident census and the full-time equivalent numbers of registered nurses, licensed practical nurses, and psychiatric technicians who provide direct care for each shift on the unit where the resident is receiving care.

12.8 A variance shall not be granted from a regulation pertaining to residents' rights without the consent of the resident of the secure residential recovery facility, and shall not be effective unless a patient representative, an ombudsman, a recognized member of the clergy, an attorney licensed to practice in Vermont, or a ~~designee of~~ legal guardian appointed by a probate division of the superior court signs a statement affirming that he or she has explained the nature and effect of the variance to the resident and that the resident has understood and consented to the variance without pressure or coercion.

**Proposed Rule:** Licensing and Operating Regulations for Therapeutic Community Residences, Agency of Human Services, Department of Disabilities, Aging and Independent Living

**Presented By:** Stuart Schurr

Motion made to accept the rule by Diane Bothfeld, seconded by John Kessler, and passed unanimously except for Ashley Berliner and Mike Obuchowski who abstained, with the following recommendations:

1. Proposed Rule Coversheet, #8 and #9: Switch answers and include acronyms listed in #9 in #8 if swapped.
2. Proposed Rule Coversheet, #11: Identify 'TCR' before using acronym and include acronym in parentheses as it's the first time being used.
3. Proposed Rule Coversheet, #12:
  - a. Change 'minimal' to 'negligible' if appropriate.
  - b. Include cost impact to facility.
4. Proposed Rule Coversheet, #13, #14 and #15: Complete once identified or state 'TBD'.
5. Public Input, #5: Include any other affected parties if appropriate.

DRAFT