

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

Agency of Human Services  
Department of Disabilities, Aging and Independent Living  
Division of Licensing and Protection  
~~103 South Main Street, Ladd Hall~~ HC 2 South, 280 State Drive  
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## Table of Contents

Residential Care Home Regulations .....	5
<b>I. General Provisions .....</b>	<b>5</b>
1.1 Introduction .....	5
1.2 Statutory Authority.....	5
1.3 Statement of Intent .....	5
1.4 Exception and Severability.....	5
1.5 Taxes .....	5
1.6 Material Misstatements .....	5
1.7 Appeals.....	5
<b>II. Definitions.....</b>	<b>6</b>
2.1 General Definitions .....	6
2.2 Specific Definitions.....	6
<b>III. Variances .....</b>	<b>10</b>
<b>IV. Licensing Procedures.....</b>	<b>11</b>
4.1 Application.....	11
4.2 Review Process .....	12
4.3 Assistive Community Care Services .....	12
4.4 Denial of Application.....	13
4.5 Re-application .....	13
4.6 Expiration.....	14
4.7 Change in Licensed Capacity.....	14
4.8 Temporary License.....	14
4.9 Change in Status.....	14
4.10 Separate License.....	15
4.11 Transfer Prohibited.....	15
4.12 License Certificate.....	15
4.13 Responsibility and Authority .....	15
4.14 Survey/Investigation.....	16
4.15 Violations: Notice Procedure .....	17
4.16 Enforcement .....	18
4.17 Identification of Unlicensed Homes.....	19
<b>V. Resident Care and Home Services.....</b>	<b>19</b>
5.1 Eligibility.....	19
5.2 Uniform Consumer Disclosure and Admission Agreements .....	20
5.3 Discharge and Transfer Requirements .....	22
5.4 Refunds.....	24
5.5 General Care.....	25
5.6 Special Care Units.....	25
5.7 Assessment.....	26
5.8 Licensed Health Care Provider Services .....	27
5.9 Nursing Services .....	27
5.10 Medication Management.....	29
5.11 Staff Services.....	32

5.12	Records/Reports .....	34
5.13	First Aid Equipment and Supplies .....	36
5.14	Restraints and Seclusion.....	36
5.15	Policies and Procedures.....	37
5.16	Transportation .....	37
<b>VI.</b>	<b>Residents' Rights.....</b>	<b>39</b>
<b>VII.</b>	<b>Nutrition and Food Services .....</b>	<b>40</b>
7.1	Food Services .....	40
7.2	Food Safety and Sanitation .....	42
7.3	Food Storage and Equipment.....	43
<b>VIII.</b>	<b>Laundry Services .....</b>	<b>43</b>
<b>IX.</b>	<b>Physical Plant .....</b>	<b>44</b>
9.1	Environment.....	44
9.2	Residents' Rooms.....	44
9.3	Toilet, Bathing and Lavatory Facilities.....	45
9.4	Recreation and Dining Rooms .....	45
9.5	Home Requirements for Persons with Disabilities .....	45
9.6	Plumbing .....	46
9.7	Water Supply.....	46
9.8	Heating.....	46
9.9	Ventilation.....	46
9.10	Life Safety/Building Construction .....	46
9.11	Disaster and Emergency Preparedness.....	46
<b>X.</b>	<b>Pets .....</b>	<b>47</b>
<b>XI.</b>	<b>Resident Funds and Property .....</b>	<b>48</b>
<b>XII.</b>	<b>Nursing Home Level of Care .....</b>	<b>49</b>
	Assisted Living Residence Regulations.....	52
<b>I.</b>	<b>General Provisions .....</b>	<b>52</b>
<b>II.</b>	<b>Exceptions.....</b>	<b>53</b>
<b>III.</b>	<b>Definitions.....</b>	<b>53</b>
<b>IV.</b>	<b>Variances .....</b>	<b>53</b>
<b>V.</b>	<b>Licenses .....</b>	<b>53</b>
<b>VI.</b>	<b>Resident Care and Services.....</b>	<b>53</b>
<b>VII.</b>	<b>Policies and Procedures.....</b>	<b>56</b>
<b>VIII.</b>	<b>Agreements and Charges .....</b>	<b>57</b>
<b>IX.</b>	<b>Negotiated Risk .....</b>	<b>57</b>
<b>X.</b>	<b>Nutrition and Food Services .....</b>	<b>58</b>
<b>XI.</b>	<b>Physical Plant .....</b>	<b>58</b>
	Appendix A – Scope and Severity Grid.....	61
	Appendix B – Nursing Home Level of Care Definition/Interpretation .....	62

## TABLE OF CONTENTS

<b>I.</b>	<b>General.....</b>	<b>1</b>
1.1	Introduction.....	1
1.2	Statutory Authority.....	1

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

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

# Residential Care Home Regulations

## I. General Provisions

### **1.1 Introduction**

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

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

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

### **1.2 Statutory Authority**

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

### **1.3 Statement of Intent**

Upon the effective date of these regulations, all residential care homes and assisted living residences in Vermont will 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 aggrieved by a decision of the licensing agency may file a request for a

Commissioner's hearing, and, if dissatisfied with the Commissioner's decision, a request a fair hearing with the Human Services Board as provided in 3 V.S.A. §3091.

## 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.

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

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

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

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

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

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

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

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

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

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

"Controlled drugs" means a drug or chemical whose manufacture, possession, or use is regulated by a government.



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

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

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

"DNR" means do not resuscitate.

"Emergency discharge" means an immediate, unexpected discharge from a home as a result of a medical emergency, a serious threat to the resident or others that cannot be addressed, or any other unforeseen event that cannot be addressed in the home.

"ERC" means Enhanced Residential Care, a service option administered by the Department of Disabilities, Aging and Independent Living, Adult Services Division, which allows for the care of nursing home level of care residents in approved residential care homes.

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

**m.**—"Home" means a licensed residential care home.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

y.—"Mechanical restraint" means any equipment, material or device that may be applied to a resident or the resident's environment for the purpose of restricting the resident's activity. Mechanical restraints include, but are not limited to, full bed rails, gates, half doors, geri chairs, positioning devices/cushions, roll bars, dignity aprons, wrist and ankle restraints, vests and pelvic restraints. The use of mechanical restraint is a treatment procedure that requires nursing overview.

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

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

"Misappropriation of property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.

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

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

~~bb.~~—"Nursing care" means the performance of services necessary to care for the sick or injured and which require specialized knowledge, judgment and skill and meets the standards of the nursing regimen or the medical regimen, or both, as defined in 26 V.S.A. §1572(42) and (53).

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

"Nursing home level of care" means skilled nursing care and related services for residents who require medical or nursing care; rehabilitation services for the rehabilitation of persons who are injured, have a disability, or are sick; and, on a 24-hour basis, health-related care and services to individuals who, because of their mental or physical condition, require nursing care and services. See Appendix B.

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

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

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

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

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

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

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

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

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

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

~~jj.~~—"Registered nurse" means an individual licensed as a registered nurse by the Vermont

Board of Nursing.

"Relocation" means the reassignment of a resident from the room the resident currently occupies to another room in the same unit in the home.

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

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

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

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

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

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

~~oo.~~—"Supervision" means providing a structured environment to ensure the resident's needs for food, shelter, medical care, socialization and safety are met. Supervision also refers to an intervention and means of mitigating the risk of an accident involving a resident. ~~If the home, or staff of the home, provide or are responsible for providing such structure, then the home is providing supervision. Examples of such structure include, but are not limited to, arranging medical appointments, procuring medications, shopping, assigning rooms, providing transportation.~~

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

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

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

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

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

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

### III. Variances

3.1. Variances from these regulations may be granted upon a determination by the licensing

agency that:

- 3.1.a Strict compliance would impose a substantial hardship on the licensee or the resident; and
- 3.1.b The licensee will otherwise meet the goal of the statutory provision or rule; and
- 3.1.c A variance will not result in less protection of the health, safety and welfare of the residents.
- 3.2 A variance shall not be granted from a statute or regulation pertaining to residents' rights.
- 3.3 A home requesting a variance must contact the licensing agency in writing describing how the variance request meets the criteria in 3.1 above.
- 3.4 Variances are subject to review and termination at any time.
- 3.5 A request for a variance from section ~~5.1.a~~12.1.b to retain or admit a resident whose needs exceed that for which the home is licensed to provide must include, with each request, the following:
  - 3.5.a A current resident assessment on the level of care (LOC) variance request form that describes the resident's level of care needs, with a description of the resident's care needs and sets forth in detail how the home will meet those needs;
  - 3.5.b A written statement from the resident or the resident's legal representative stating attesting to the resident's fully informed choice to remain in the home; and stating that they have the resident or the resident's legal representative has been informed the resident will have to leave if the variance is denied or terminated.
  - 3.5.c A written statement from the resident's physician-licensed health care provider giving the resident's prognosis and recommending retention at or admission to the home.

#### IV. Licensing Procedures

##### 4.1 Application

- 4.1.a Any person or entity desiring to operate or establish a residential care home shall submit ~~two copies of plans and specifications for review, prior to beginning construction or operation, to a~~ licensing application to the licensing agency.

Department of Disabilities, Aging and Independent Living  
Division of Licensing and Protection  
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In addition, such person or entity shall:

- 4.1.b Provide written evidence to the licensing agency of compliance with local zoning codes, or a statement signed by the city, town or village clerk that such a code has not been adopted in the community.
- ~~4.1.c Submit a license application to the licensing agency.~~
- 4.1.~~c~~d At least ninety (90) days prior to the projected opening date, request inspections by all entities referenced in subsection 4.2, a, b, and c below to which plans and specifications were submitted. Modifications shall be made as required by these agencies to achieve full code compliance.
- 4.1.~~d~~e Provide the licensing agency with at least three references from unrelated persons able to attest to the applicant's abilities to run a residential care home prospective licensee's professional experience with residential care, assisted living or health care management, and attesting to the applicant's prospective licensee's character.

- 4.1.e Provide the licensing agency with the name(s) of the owner(s) of the residential care home, if different from the prospective licensee.
- 4.1.f Provide the licensing agency with contact information for the prospective licensee and the owner(s) of the proposed home and for the owner(s) of the building that will be used as the home, as well as an organizational chart, name of the owners' agent, if any, and other relevant information about the parent company.
- 4.1.g Provide the licensing agency with a statement attesting to the financial stability of the proposed owner(s) of the home.
- 4.1.h Provide the licensing agency with a written statement attesting that the owner of the physical plant in which the residential care home will be located agrees to maintain the physical plant in a safe and habitable condition and in compliance with all applicable health and safety codes.

#### **4.2 Review Process**

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

- ~~4.2.a Licensing and Protection requires the applicant to submit blueprints for new construction or floor plans to the licensing agency for review by an architect and engineer.~~
- 4.2.ba Labor and Industry requires Provide documentation attesting that all building plans ~~to be~~ have been submitted to ~~Labor and Industry~~ and approved by the Department of Public Safety's Division of Fire Safety for compliance with the fire safety code and accessibility.
- 4.2.eb The home shall submit evidence of compliance with all Department of Environmental Conservation ~~requires applications to be reviewed with regard~~ requirements related to water and sewage systems.

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

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

- 4.3.a To participate as an Assistive Community Care Services (ACCS) Medicaid provider, a home must be:
  - (1) Licensed as a Level III home;
  - (2) Maintained in compliance with the Residential Care Home Licensing Regulations; and
  - (3) Enrolled as a Medicaid provider.
- 4.3.b A home must submit a letter requesting ACCS status to the licensing agency that includes:
  - (1) A brief statement of interest in the program;
  - (2) A date when the home proposes to begin participation in the program; and
  - (3) Whether any residents eligible for the program currently reside in the home.
  - (4) A proposed amended resident agreement reflecting program participation terms consistent with these regulations;
  - (5) Proposed amended policies and procedures reflecting participation in the ACCS program.
  - (6) A statement certifying that all of the services required in the ACCS definition found at 2.2.d of the regulations are available and will be provided to meet the assessed needs of

each resident.

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

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

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

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

- 4.5.a ~~Application forms will be mailed to the applicant approximately sixty (60) days before the end of the licensing year. The~~ completed application form, including all required information in full, must be returned to the licensing agency not less than forty-five (45) days before the expiration date. Upon receipt of a properly completed application, a license will be renewed assuming all other conditions for licensure are met.
- 4.5.b Licenses shall 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.c Requests for continued participation in the ACCS Medicaid program must be submitted on an annual basis with the license re-application.

#### **4.6 Expiration**

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

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

- 4.7.a A home shall 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.

- 4.7.b A home may provide other related services, such as acting as a senior meals program meal site or adult day care, provided the home:

- (1) Has adequate space, staff, and equipment to appropriately provide the service;
- (2) Has fully informed residents on admission, or upon addition of a new service, about the additional services;
- (3) Ensures residents of the home will not be inconvenienced by the service; and
- (4) Has received approval from the licensing agency in advance.

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

- 4.7.d If a residential care home becomes a meal site, the home cannot charge a resident of the home for a meal at the meal site unless that meal is in addition to the meal the home is required to provide to the resident.

#### **4.8 Temporary License**

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

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

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

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



- 4.9.c -The new licensee shall provide each resident with a new uniform consumer disclosure and a new written admission agreement that describes all rates and charges as ~~defined set forth~~ in 5.2.a and 5.2.b.
- 4.9.d The licensee shall give each resident and the licensing agency a written ninety (90) day notice whenever its services, rates, retention policies or physical plant will change in such a way as to significantly enhance or significantly restrict the potential for residents to remain in the residence.
- 4.10 *Separate License***  
A separate license is required for each home that is owned and operated by the same management and/or owner(s).
- 4.11 *Transfer Prohibited***  
A license shall be issued only for the person(s) and premises named in the application and is not transferable or assignable.
- 4.12 *License Certificate***  
The home's current license certificate shall be protected and appropriately displayed in such a place and manner as to be readily viewable by persons entering the home. Any conditions which affect the license in any way shall be posted adjacent to the license certificate.
- 4.13 *Responsibility and Authority***
- 4.13.a Each home 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.
- 4.13.b ~~Whenever the authority is vested in the governing board of a firm, partnership, corporation, company, association or joint stock association~~Regardless of the type of ownership or control of the home, there shall be appointed a duly authorized qualified manager, however named, who will be in charge of the daily management and business affairs of the home, who shall be fully authorized and empowered to carry out the provisions of these regulations, and who shall be charged with the responsibility of doing so.
- (1) The manager of the home shall be present in the home an average of 32 hours per week. The 32 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 32-hour requirement.
- (2) In the event of extended absences by the manager, an interim manager must be appointed.
- 4.13.c The manager shall 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.
- 4.13.d The qualifications for the manager of a home ~~are~~shall be, at a minimum:
- (1) ~~Completion~~At least a high school diploma or equivalent AND completion of a State approved certification course AND; ~~or~~
- (2) One of the following:

- i. At least an ~~Associates-associates~~ Degree-degree in the area of human services ~~and~~ AND two (2) years of administrative experience in adult residential care; or
- ii. ~~Three (3)~~ At least a high school diploma or equivalent AND four (4) years of general experience in residential care, including ~~one-two (2)~~ years in management, supervisory or administrative capacity; or
- iii. A current Vermont license as a nurse or nursing home administrator; or
- iv. Other professional qualifications and experience related to the provision of healthcare services or management of healthcare facilities including, but not limited to, a licensed or certified social worker-. For this qualification, approval of the specific qualifications by the licensing agency is required.

4.13.e The owner(s) and the licensee shall be readily available to the licensing agency and the manager of the home upon request and shall respond to requests for communication and/or information within five (5) business days. This could include financial information, operating agreements, or information about care and services.

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

- 4.14.a The licensing agency shall inspect a home prior to issuing a license and may inspect a home any other time it considers an inspection necessary to determine if a home is in compliance with these regulations.
- (1) Authorized staff of the licensing agency shall have access to the home at all times, with or without notice.
  - (2) The living quarters of the manager of a home may be subject to inspection only where the inspector has reason to believe the licensed capacity of the home has been exceeded and only for the purpose of determining if such a violation exists. The inspector shall permit the manager to accompany him or her on such an inspection.
  - (3) If an authorized inspector is refused access to a home or the living quarters of the manager, the licensing agency may, pursuant to 18 V.S.A. §121, seek a search warrant authorizing the inspection of such premises-. Failure to permit access upon request also shall constitute a violation of the regulations subject to the penalties set forth in section 4.15 below.
  - (4) If, as a result of an investigation or survey, the licensing agency determines that a home is unlicensed and meets the definition of a residential care home, written notice of the violation shall be prepared pursuant to Title 33 V. S. A. §2008 (b) and §4.14 of these regulations.
- 4.14.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.
- 4.14.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 home must develop and submit an acceptable plan of correction. Residents who wish to participate in the exit conference have the right to do so. Representatives of the Office of the State Long Term Care Ombudsman may also attend the exit conference.
- 4.14.d A written report shall be submitted to the licensee at the conclusion of an investigation. The

report ~~will~~shall contain the results of the investigation, any conclusions reached and any final determinations made by the licensing agency.

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

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

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

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

(1) A description of each condition that constitutes violation;

(2) Each rule or statutory provision alleged to have been violated;

(3) The scope and severity of each violation, pursuant to the grid set forth in Appendix A;

~~(34)~~ The date by which the home must return a plan of correction for the alleged violations;

~~(45)~~ The date by which each violation must be corrected;

~~(56)~~ Sanctions the licensing agency may impose for failure to correct the violation or failure to provide proof of correction by the date specified;

~~(67)~~ The right to apply for a variance as provided for in Section III of these regulations;

~~(78)~~ The right to an informal review by the licensing agency; and

~~(98)~~ The right to appeal the licensing agency determination of violation, with said appeal being made to the Commissioner within fifteen (15) days of the mailing of the notice of violation.

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

4.15.c 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.

4.15.d 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 within fifteen (15) days of the mailing of the decision by the licensing agency.

4.15.e 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.

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

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

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

#### 4.16 Enforcement

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

4.16.a Administrative penalties against a home for failure to correct a violation or failure to comply with a plan of corrective action for such violation as follows:

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

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

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

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

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

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

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

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

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

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

(6) Failure to demonstrate the home's financial stability within ten (10) days of receipt of a written request to do so from the licensing agency; or

(7) Misrepresentation by the home of its licensure status or capacity in its advertising, promotional materials, brochures, or other materials.

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

- 4.16.d The licensing agency, the attorney general, or a resident may bring an action for injunctive relief against a home in accordance with the Rules of Civil Procedure to enjoin any act or omission which constitutes a violation of the law or regulation. Notice of such action shall be given to the State Long Term Care Ombudsman.
- 4.16.e The licensing agency, the attorney general, or a resident may bring an action in accordance with the Rules of Civil Procedure for appointment of a receiver for a home, if there are grounds to support suspension, revocation, modification or refusal to renew the home's license and alternative placements for the residents are not readily available. Notice of such action shall be given to the State Long Term Care Ombudsman.
- 4.16.f The licensing agency may enforce a final order by filing a civil action in the superior court in the county in which the home is located, or in Washington Superior Court.
- 4.16.g The remedies provided for violations of the law or regulations are cumulative.

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

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

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

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

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

#### **5.1 Eligibility**

- 5.1.a The licensee shall 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 home is able to safely and appropriately provide, without first having met the requirements of Section 12, below, and having obtained a variance from the licensing agency.
- 5.1.b A person with a serious, acute illness requiring the medical, surgical or nursing care of a general or special hospital shall not be admitted to or retained as a resident in a residential care home.

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

5.1.d The licensee shall ensure that all marketing and advertising materials accurately reflect the level at which the home is licensed and the care and services available and provided at the home.

## 5.2 Uniform Consumer Disclosure and Admission Agreements

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

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

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

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

(4) The uniform consumer disclosure shall be provided:

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

ii. to the public upon request.

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

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

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

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

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

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

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

5.2.c(1) \_\_\_\_\_ In addition to general resident agreement requirements, agreements for all ACCS participants shall include:

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

(7) A home certified to provide assistive community care services (ACCS) shall designate a staff person responsible for case management, who shall provide at least the following case management services: maintenance and implementation of a current assessment and plan of care, and coordination of available community services.

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

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

5.2.f. ~~-~~ Any change of rate or services shall be preceded by a ~~thirty (30)~~ ninety (90) day written notice to the resident and the resident's legal representative, if any.

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

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

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

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

(1) An involuntary discharge of a resident is the removal of the resident from a residential care home when the resident or the resident's legal representative has not requested or consented in advance to the removal. A transfer is the removal of the resident from the room the resident currently occupies to another specialized room-unit in the home or to another facility with an anticipated return to the home. A relocation is the reassignment of a resident from the room the resident currently occupies to another room in the same unit in the home.

An involuntary discharge or transfer may occur only when:

- i. The resident's care needs exceed those which the home is licensed or approved through a variance to provide; or
  - ii. The home is unable to meet the resident's assessed needs; or
  - iii. The resident presents a threat to the resident's self or the welfare of other residents or staff; or
  - iv. The discharge ~~or transfer~~ is ordered by a court; or
  - v. The resident has failed to pay monthly charges for room, board and care in accordance with the admission agreement.
- (2) In the case of an involuntary discharge, ~~or transfer~~, or relocation, the manager shall:
- i. Notify the resident, and if known, a ~~family member and/or~~ legal representative of the resident, of the discharge ~~or~~ transfer, or relocation, and the specific reasons for the move in writing and in a language and manner the resident understands at least 72 hours before a relocation or transfer within the home and thirty (30) days before discharge from the home. If the resident does not have a ~~family member or~~ legal representative and requests assistance, the notice shall be sent to the Long Term Care Ombudsman, ~~Vermont Protection and Advocacy~~ Disability Rights Vermont or and Vermont Senior Citizens Legal Aid's Elder Law Project. With the consent of the resident, a family member also may be notified of the pending discharge, transfer or relocation.
  - ii. ~~Use the form prescribed by the licensing agency for giving written notice of discharge or transfer and include~~ Include a statement in ~~large print~~ any legible font, size 18, that the resident has the right to appeal the home's decision to transfer, relocate or discharge with the appropriate information regarding how to do so.
  - iii. Include a statement in the written notice that the resident may remain in the room, unit or home during the appeal.
  - iv. Place a copy of the notice in the resident's clinical record.
  - v. Ensure that the facility or location to which the resident will be discharged or transferred is appropriate to meet the assessed needs of the resident. To determine whether the new facility or location is appropriate, the manager shall consider the assessed needs of the resident and the ability of the proposed facility to meet those



needs. The manager may take into consideration the resident's wishes, the family's wishes, if appropriate, and the proximity of the proposed facility to the current home.

- (3) A resident has the right to appeal the decision by the home to discharge or transfer. The process for appeal is as follows:
- i. To appeal the decision to transfer or discharge, the resident must notify the administrator of the home or the director of the licensing agency. Upon receipt of an appeal, the administrator ~~must~~shall immediately notify the director of the licensing agency.
  - ii. The request to appeal the decision may be oral or written and must be made within 10 business days of the receipt of the notice by the resident.
  - iii. Both the home and the resident shall provide all the materials deemed relevant to the decision to transfer or discharge to the director of the licensing agency as soon as the notice of appeal is filed. The resident may submit orally if unable to submit in writing. Copies of all materials submitted to the licensing agency will be available to the resident upon request.
  - iv. The director of the licensing agency will render a decision within eight business days of receipt of the notice of appeal.
  - v. The notice of decision from the director will be sent to the resident and to the home, will state that the decision may be appealed to ~~the Human Services Board~~the Commissioner, and will include information on how to do so.
  - vi. The resident or the home will have 10 business days after receipt of the Commissioner's decision to file a request for an appeal with the Human Services Board by writing to the Board. The Human Services Board will conduct a de novo evidentiary hearing in accordance with 3 V.S.A. §3091.

(4) A resident has the right to challenge the decision by the home to relocate the resident. To appeal the decision, the resident may notify the manager of the home or the director of the licensing agency orally or in writing.

- i. Upon receipt of the notice, the manager shall immediately notify the director of the licensing agency.
- ii. The manager shall consider the reasons the resident cites for contesting the relocation and shall make a decision in writing and notify the resident and the licensing agency of the decision within three (3) days.
- iii. The licensing agency shall review the manager's decision to relocate the resident and shall notify the resident and the home of its decision within three (3) days.

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

- (1) An emergency discharge or transfer shall occur only in extreme circumstance. An emergency discharge may be made with less than thirty (30) days notice under the following circumstances:
- i.—\_\_\_\_\_ The resident's attending ~~physician~~licensed health care provider documents in the resident's record that the discharge or transfer is an emergency measure necessary for the health and safety of the resident or other residents; or
  - ii.—\_\_\_\_\_ A natural disaster or emergency necessitates the evacuation of residents from the home; or
  - iii.—\_\_\_\_\_ The resident presents an immediate threat to the health or safety of self or

others. In that case, the licensee shall request permission from the licensing agency to discharge or transfer the resident immediately. Permission from the licensing agency is not necessary when the immediate threat requires intervention of the police, mental health crisis personnel, or emergency medical services personnel ~~who render the professional judgment that discharge or transfer must occur immediately~~. In such cases, the licensing agency shall be notified on the next business day; or

iv.—\_\_\_\_\_ When ordered or permitted by a court.

(2) The home shall issue a written notice of emergency discharge to the resident as soon as a determination has been made. The notice shall include the notice requirements set forth in 5.3.a (2), above, with the exception of 5.3.a.(2) iii.

(3) If a resident is transferred to a hospital for treatment, that transfer, shall not constitute an emergency discharge, nor shall the hospital's decision that the resident is ready for discharge from the hospital be a basis for an emergency discharge from the home. In order to refuse to re-admit a resident after transfer to a hospital, the home shall meet all of the requirements for an emergency discharge set forth above and shall obtain prior approval from the licensing agency.

- 5.3.c If the resident agrees to a discharge or transfer, the discharge or transfer may occur prior to the effective date of notice.
- 5.3.d A home must provide sufficient preparation and orientation to residents to ensure a safe and orderly transfer or discharge from the home.
- 5.3.e A home may not initiate an involuntary discharge of a resident whose care is provided and paid for under the ACCS program because of voluntary temporary, leaves from the home.
- 5.3.f A home is responsible for any charges associated with disconnecting, relocating or reconnecting telephones, cable television, air-conditioning or other similar costs resulting from a home's decision to transfer the resident.
- 5.3.g A licensee who intends to discontinue all or part of the operation, or to change the admission or retention policy, ownership, or location of the home in such a way as to necessitate the discharge or transfer of residents, shall 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 or transferred in a safe and orderly manner. When such change in status does not necessitate the discharge or transfer of residents, the licensee shall give the licensing agency and residents at least thirty (30) days prior written notice.
- 5.3.h The home may include language in its admission agreement requiring residents to provide thirty (30) days notice when the resident intends to voluntarily leave the home. The death of a resident shall not be considered voluntarily leaving the home and shall not require prior notice.

#### **5.4 Refunds**

- 5.4.a When a resident is discharged, the resident shall receive a refund, within ~~15~~ thirty (30) days of discharge, for any funds paid in advance for each day care was not provided. In the case of a discharge to a hospital or other temporary placement, the effective date for this provision shall be the day the home is notified the resident will not be returning. For the purposes of providing refunds, "day of discharge" shall be considered the day the resident's room is empty of the resident's belongings, if those belongings are too large or difficult for the home to store temporarily. The facility shall temporarily store small items such as clothing and other

personal items if necessary.

- 5.4.b The home shall document in the resident's record the date of receiving notification that the resident would not return, and from whom notice was received.
- 5.4.c A home may not seek to recover for lost income from ACCS residents for care on days that are not days of service. A home may not require, induce or accept payment for care for residents in the ACCS program for days of residence that are not days of service.
- 5.4.d In the case of ACCS residents and homes, the refund shall be based on any funds paid in advance by the resident for care and services. A home shall not offset all or any part of the refund by charging the resident for covered or optional services for any day that does not meet the definition of a day of service.

## 5.5 *General Care*

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

## 5.6 *Special Care Units*

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

(6) A specific description of unit staffing, ~~which shall~~ include:

i. Staff qualifications;

ii. Staffing levels or ratios for each shift;

iii. Orientation content and duration;

~~iiii.~~ In-service education and specialized training; and

v. For dementia or memory care-type units, specialized training shall include, at a minimum: understanding dementia; communication strategies; person-centered care; addressing challenging behaviors; meaningful activities and social engagement for residents; and the role of the environment.

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

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

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

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

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

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

5.6.f A home shall make all special care unit proposals and training curricula available for review by residents, legal guardians and family members. The home shall post a notice about the availability of the proposals and the training curricula in a prominent public place within the special care unit(s).

## 5.7 **Assessment**

5.7.a A Level III home's registered nurse shall evaluate any prospective resident's functional, cognitive, and health status before the resident or responsible party signs the admission agreement and the resident takes occupancy in the home. The purpose of a pre-admission assessment is to determine whether the prospective resident is eligible for Level III care and whether needed services are available. The registered nurse is not required to use the assessment instrument for the pre-admission assessment but must document the assessment and the nurse's conclusions.

5.7.ab An assessment shall be completed for each resident within 14 days of admission, consistent with the ~~physician's~~ diagnosis and orders from the licensed health care provider, using an assessment instrument provided by the licensing agency. If the home is licensed as a Level III residential care home, the assessment shall be completed by a registered nurse. The resident's abilities regarding medication management shall be assessed within 24 hours and nursing delegation implemented, if necessary.

~~5.7.b If a resident requires nursing overview or nursing care, the resident shall be assessed by a~~

~~licensed nurse within fourteen days of admission to the home or the commencement of nursing services, using an assessment instrument provided by the licensing agency.~~

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

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

- 5.8.a All residents shall be under the continuing general supervision of a physician-licensed health care provider of their choosing, and shall receive assistance, if needed, in scheduling and attending medical appointments.
- 5.8.b A resident has the right to refuse all medical care for religious reasons or other reasons of conviction, but in such cases, the home ~~must~~ shall assess its ability to properly care for the resident and document the refusal and the reasons for it in the resident's record.
- 5.8.c Any refusal of medical care and the reasons for the refusal ~~must~~ shall be documented in the resident's record. If the resident has an attending ~~physician~~ physician-licensed health care provider, the ~~physician-licensed provider~~ shall be notified about the refusals of care.
- 5.8.d All ~~physicians'~~ orders from a licensed health care provider obtained via telephone shall be countersigned by the ~~physician~~ licensed practitioner health care provider within 15 days of the date the order was given. Unlicensed staff shall not take telephone orders; all telephone orders shall be obtained by a licensed nurse.

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

- 5.9.a ~~—The home shall have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care or as specified by the licensing agency. Residents who require more than nursing overview or medication management shall not be retained in a residential care home unless the provisions of the following subsections (1)-(5) are all met:~~
- ~~(1) —The nursing services required are either:~~
- ~~i. —Provided fewer than three times per week; or~~
- ~~ii. —Provided for up to seven days a week for no more than 60 days and the resident's condition is improving during that time and the nursing service provided is limited in nature; or~~
- ~~iii. —Provided by a Medicare-certified Hospice program; and~~
- ~~(2) —The home has a registered nurse on staff, or a written agreement with a registered nurse or home health agency, to provide the necessary nursing services and to delegate related appropriate nursing care to qualified staff; and~~
- ~~(3) —The home is able to meet the resident's needs without detracting from services to other residents; and~~
- ~~(4) —The home has a written policy, explained to prospective residents before or at the time of admission, which explains what nursing care the home provides or arranges for, how it is paid for and under what circumstances the resident will be required to move to another level of care; and~~
- ~~(5) —Residents receiving such care are fully informed of their options and agree to such care in the residential care home.~~

- 5.9.b The following services are not permitted in a residential care home except under a variance granted by the licensing agency: intravenous therapy; ventilators ~~or respirators~~; daily catheter irrigation; feeding tubes; care of stage III or IV ~~decubitus~~ pressure ulcers; suctioning; sterile dressings is permitted but only if the service is provided by a registered nurse.
- 5.9.c For each resident requiring nursing overview, administration of medication, or nursing care, the registered nurse shall:
- (1) Complete an assessment of the resident in accordance with section 5.7;
  - (2) ~~Oversee d~~ Development of a person-centered written plan of care, in accordance with the nursing process and professional standards of practice, for each resident that is based on abilities and needs as identified in the resident assessment. The resident, and if the resident chooses, interested parties such as family or close supports, shall be invited and allowed to participate in care planning meetings. A plan of care must describe the care and services necessary to assist the resident to maintain independence and well-being, and must be revised as the resident's abilities and needs change;
  - (3) Ensure the written plan of care is implemented by staff;
  - (34) Provide direct instruction and supervision to all direct care personnel regarding each resident's health care needs ~~and~~ and nutritional needs ~~and~~, delegate nursing tasks as appropriate and ensure documentation of registered nurse training and competency evaluation for each nursing task delegated to each staff member;
  - (45) Maintain a current list for review by staff and physician of all residents' medications. The list shall include: resident's name; medications; date medication ordered; dosage and frequency of administration; and likely side effects to monitor;
  - (56) ~~Assure~~ Ensure that residents' medications are reviewed periodically and that all resident medications have either a supporting medical diagnosis or problem;
  - (67) Maintain a current list of all treatments for each resident that shall include: the name, date treatment ordered, treatment and frequency prescribed and documentation to reflect that treatment was carried out;
  - (78) ~~Assure~~ Ensure that symptoms or signs of illness or accident are recorded at the time of occurrence, along with action taken and proper documentation of ongoing nursing follow-up;
  - (89) Ensure that the resident's record documents any changes in a resident's condition as well as the nursing actions taken;
  - (10) Ensure that the resident, licensed health care provider, and, if applicable, the resident's legal representative, are notified immediately when there is an accident or incident involving the resident that results in injury, a significant change in the resident's condition, or a need to alter treatment significantly.
  - (911) Review all therapeutic diets and food allergies with dietary staff as needed to assure nutritional standards are met and are consistent with ~~physician~~ the orders of the licensed health care provider and the recommendations of the registered dietician and the speech language pathologist;
  - (1012) Monitor stability of each resident's weight;
  - (13) Ensure that direct care staff follow current professional standards of practice and current infection control standards during provision of services;

(~~14~~14) Implement assistive therapy as necessary to maintain or improve the resident's functional status, with consultation from a licensed professional as needed; and

(~~15~~15) Assume responsibility for staff performance in the administration of or assistance with resident medication in accordance with the home's policies.

5.9.d The delegation of nursing tasks and medication administration by the registered nurse is not transferable. Upon a change in the delegating registered nurse, the incoming registered nurse shall follow professional standards of nursing practice regarding delegation of nursing tasks to unlicensed staff.

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

(1) Level III homes may utilize home health agency services to provide nursing overview or medication management provided such services are provided on a contractual basis to the home and the cost for such a service is not charged to Medicare or the resident. Level IV homes may utilize home health agency services to provide nursing overview or medication management on a ~~resident-resident~~-specific basis without a special contractual arrangement.

(2) If a resident requires skilled nursing services from a home health agency because the home cannot provide the services and the services will continue for more ~~than sixty~~ (~~60~~thirty (30)) days, the home must request a variance in writing from the licensing agency to retain the resident.

(3) Home health agencies shall not provide personal care services, such as bathing, for residents in residential care homes except with the permission of the licensing agency. Personal care by home health agencies associated with hospice care is permitted as long as the home meets all other requirements.

## 5.10 Medication Management

5.10 Level III homes shall provide medication management only under the supervision of a registered nurse. Level IV homes must determine whether the home is capable of and willing to provide assistance with medications and/or administration of medications as provided under these regulations. Residents must be fully informed of the home's policy regarding medication management prior to admission, both in the uniform consumer disclosure and in the admission agreement.

5.10.a Each residential care home ~~must~~shall have written policies and procedures describing the home's medication management practices. The policies must cover at least the following:

~~(1) Level III homes must provide medication management under the supervision of a licensed nurse. Level IV homes must determine whether the home is capable of and willing to provide assistance with medications and/or administration of medications as provided under these regulations. Residents must be fully informed of the home's policy prior to admission.~~

(~~2~~1) Who provides the professional nursing delegation if the home administers medications to residents unable to self-administer and how the process of delegation is to be carried

out in the home.

- (32) Qualifications of the staff who will be managing medications or administering medications and the home's process for nursing supervision of the staff.
- (43) How medications shall be obtained for residents including choices of pharmacies.
- (54) Procedures for documentation of medication administration.
- (65) Procedures for disposing of outdated or unused medication, including designation of a person or persons with responsibility for disposal.
- (76) Procedures for monitoring side effects of psychoactive medications.
- (7) Procedures for ensuring that informed consent is obtained from the resident for the use of anti-psychotic medications when there is a diagnosis of dementia.
- (8) Procedures for reporting and tracking medication errors.
- (9) Procedures setting forth how new medication and/or treatment orders will be obtained and implemented in the home.
- (10) Procedures to ensure that registered nurse delegation has been completed prior to unlicensed staff administering any new medication to any resident.
- (11) Procedures for obtaining, storing, administering, documenting, counting and disposing of controlled substances.

- 5.10.b The manager of the home is responsible for ensuring that all medications are handled according to the home's policies and that designated staff are fully trained in the policies and procedures.
- 5.10.c Staff ~~will~~ shall not assist with or administer any medication, prescription or over-the-counter medications for which there is not a ~~physician's~~ written, signed order from a licensed health care provider and a supporting diagnosis or problem statement in the resident's record.
- 5.10.d If a resident requires medication administration, unlicensed staff may administer medications under the following conditions:
- (1) A registered nurse ~~must~~ shall conduct an assessment consistent with the ~~physician's~~ licensed health care provider's diagnosis and orders of the resident's care needs as required in section 5.7.c.
  - (2) A registered nurse ~~must~~ shall delegate the responsibility for the administration of specific medications to designated staff for designated residents. Delegation shall be resident-specific for each medication and is not transferable.
  - (3) The registered nurse ~~must~~ shall 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~~ the effect of medications, as well as changes in medications;
    - iii. Assessing the resident's condition and the need for any changes in medications; and
    - iv. Monitoring and evaluating the designated staff performance in carrying out the nurse's



instructions regarding medication administration and documentation.

v. Ensuring that all applicable staff are trained and delegated before the staff are permitted to administer any newly prescribed medication to any resident.

- (4) All medications ~~must~~shall be administered by the person who prepared the doses unless the registered nurse responsible for delegation approves in writing of an alternative method of preparation and administration of the medications.
- (5) Staff other than a nurse may administer PRN psychoactive medications (except anti-psychotic medications) only when the home has a written plan for the use of the PRN medication which: describes the specific behaviors the medication is intended to correct or address; identifies any known triggers for the behaviors; specifies the circumstances that indicate the use of the medication; educates the staff about what desired effects or undesired side effects the staff must monitor for; and documents the time of, reason for and specific results of the medication use.
  - i. Unlicensed staff shall not administer anti-psychotic medications on a PRN or "as needed" basis.
  - ii. Prior to PRN psychoactive medications being administered to a resident who is not capable of self-administration, non-pharmacological interventions shall be attempted, which shall be described in the resident's plan of care. The non-pharmacological interventions attempted prior to the administration of the PRN psychoactive medications shall be documented in the resident's care plan.
- (6) Insulin. Staff other than a nurse may administer insulin injections only when:
  - i. The ~~diabetic resident's~~ condition and medication regimen of the person with diabetes is considered stable by the registered nurse who is responsible for delegating the administration, which shall be documented by the current delegating nurse in the medical record; and
  - ii. The designated staff to administer insulin to the resident have received additional training in the administration of insulin, including the use of various injection vehicles (syringes, insulin pens, etc.), and return demonstration, and the registered nurse has deemed them competent and documented that assessment; and
  - iii. The registered nurse monitors the resident's condition regularly and is available when changes in condition or medication might occur.

5.10.e Staff responsible for assisting residents with medications must receive training from the registered nurse in the following areas before assisting with any medications ~~from the licensed nurse~~:

- (1) The basis for determining "assistance" versus "administration".
- (2) The resident's right to direct the resident's own care, including the right to refuse medications.
- (3) Proper techniques for assisting with medications, including hand washing and checking the medication for the right resident, medication, dose, time, route.
- (4) Signs, symptoms and likely side effects to be aware of for any medication a resident receives.
- (5) The home's policies and procedures for assistance with medications.

5.10.f Residents who are capable of self-administration have the right to purchase and self-self-administer over-the-counter medications. However, the home must make every reasonable

effort to be aware of such medications in order to monitor for and educate the residents about possible adverse reactions or interactions with other medications without violating the resident's rights to direct the resident's own care. If a resident's over-the-counter medications use poses a significant threat to the resident's health, staff must notify the physician licensed health care provider. The home's registered nurse shall assess and document a resident's abilities regarding self-administration at least annually and upon any significant change(s) in the resident's medications or condition.

5.10.g Homes ~~must~~shall establish procedures for documentation sufficient to indicate to the licensed health care provider~~physician~~, 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 home;
- (3) All PRN medications administered, including the date, time, reason for giving the medication, and the effect;
- (4) A current list of who is administering medications to residents, including staff to whom a registered nurse has delegated administration; and
- (5) For residents receiving psychoactive medications, a record of monitoring for side effects.
- (6) All incidents of medication errors.

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

- (1) Resident medications that the home manages ~~must~~shall be stored in locked compartments under proper temperature controls. Only authorized personnel shall have access to the keys.
- (2) Medications requiring refrigeration shall be stored in a 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 home is able to provide the resident with a secure storage space to prevent unauthorized access to the resident's medications. Whether or not the home is able to provide such a secured space must shall be included in the uniform consumer disclosure and in the admission agreement and shall be explained to the resident on or before admission.
- (4) Medications left after the death or discharge of a resident, or outdated medications, shall be promptly disposed of in accordance with the home's policy and applicable standards of practice.
- (5) Narcotics and other controlled drugs must be kept in a locked cabinet. Narcotics must be accounted for on ~~a daily basis~~each shift. ~~Other~~eControlled drugs shall be accounted for on at least a weekly-daily basis.

### **5.11 Staff Services**

5.11.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 assure prompt, appropriate action in cases of injury, illness, fire or other emergencies.

5.11.b The home ~~must~~shall ensure that staff demonstrate competency in the skills and techniques they are expected to perform before providing any direct care to residents.

5.11.c ~~There~~The home shall provide ~~be~~ at least twelve (12) hours of training upon hire and each year ~~for to~~ each staff person providing direct care to residents. The training ~~must~~shall include, but is not limited to, the following:

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

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

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

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

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

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

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

5.11.fg There shall be at least one (1) staff member on duty and in charge at all times. In homes with more than fifteen (15) residents, there shall be at least one (1) responsible staff member on duty and awake at all times. Staff in all homes shall be sufficient to provide for the care and supervision of all residents. There shall be a record of the staff on duty, including names, titles, dates and hours on duty.

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

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

## **5.12 Records/Reports**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Name of resident;

(B) Circumstances of the death;

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

(3) ~~A report of a~~Any unexplained absence of a resident from a home for more than ~~42-two (2)~~ hours shall be reported to the police, legal representative and family, if any. The incident shall be reported to the licensing agency within ~~twenty-four (24)~~twelve (12) hours of disappearance followed by a written report within ~~seventy-two (72)~~forty-eight (48) hours, a copy of which shall be maintained.

(4) ~~A written report of~~any breakdown or cessation to the home's physical plant's major services (plumbing, heat, water supply, air conditioning, etc.) or supplied service, which disrupts the normal course of operation. The licensee shall notify the licensing agency immediately whenever such an incident occurs. A copy of the report shall be sent to the licensing agency within seventy-two (72) hours.

(5) ~~A written report of~~any reports, allegations or incidents of abuse, neglect ~~or~~, exploitation of residents or misappropriation of resident property shall be reported to the licensing

agency.

i. The licensee and staff shall report any case of suspected abuse, neglect or exploitation of a resident to Adult Protective Services (APS). A separate report shall also be made to the licensing agency. APS may be contacted by calling toll-free 1-800-564-1612. The licensing agency may be contacted by calling toll-free 1-888-700-5330. The home shall make the reports to APS and to the licensing agency immediately but not later than within 48 hours of learning of the suspected, reported or alleged incident.

ii. In addition to the filing the reports as described above, a home shall conduct its own investigation and shall take immediate steps to prevent further abuse, neglect or exploitation from occurring. The results of the home's investigation shall be reported to the licensing agency within 5 business days from the date of the initial report of the allegation. The home's investigation and determination shall not delay reporting of the alleged or suspected incident to Adult Protective Services and to the licensing agency.

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

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

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

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

(7) A written report of all medication errors that result in harm.

5.12.d Reports and records shall be filed and stored in an orderly manner so that they are readily available for reference.

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

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

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

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

### **5.14 Restraints and Seclusion**

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

5.14.b When a temporary/emergency mechanical restraint is applied by the staff, a physician licensed health care provider must be consulted immediately and written approval for continuation of the restraint obtained. The written order, signed by the physician licensed

health care provider, should contain the resident's name, date, time of order, and reason for restraint, means of restriction, and period of time the resident is to be restrained. A record shall be kept of every time the restraint is applied and removed during the day and night. Restraints must be removed at least every two (2) hours when in use so as to permit personal care to be given. A resident in a restraint shall be under continuous supervision by the staff of the home.

- 5.14.c A resident shall not be secluded in any room by locking or fastening a solid door from the outside. Half doors or gates may be employed only with the prior approval of both the physician-licensed health care provider and the licensing agency.
- 5.14.d The home shall notify the licensing agency and the resident representative within 24 hours when a restraint is used, and within 72 hours must complete a reassessment of the resident to determine if the resident's needs can be met within the residential care setting. The reassessment shall include consultation with the physician-licensed health care provider and the resident or the resident's representative.
- 5.14.e Residents shall have a right to be free from chemical restraints and unnecessary mechanical restraints. Residents shall be notified at the time a restraint is applied of their right to challenge the use of the restraint. A resident has the right to meet with and discuss the challenge with the following individuals:
- (1) The home manager;
  - (2) The licensing agency;
  - (3) The Commissioner of the licensing agency.

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

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

### **5.15 Policies and Procedures**

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

### **5.16 Transportation**

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

### **~~5.17—Death of a Resident~~**

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

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

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

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

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

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

~~(1) Name of resident;~~

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

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

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

### ~~5.18 Reporting of Abuse, Neglect or Exploitation~~

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

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

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

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

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

~~5.1917.b Any designated representative of the Office of the Long Term Care Ombudsman or Protection and Advocacy, Inc. Disability Rights Vermont shall have access to the home at any time in accordance with those programs' 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.~~

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

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



## VI. Residents' Rights

- 6.1 Every resident shall be treated with consideration, respect and full recognition of the resident's dignity, individuality, and privacy. Care provided to residents shall be person-centered. A home may not ask a resident to waive the resident's rights.
- 6.2 Each home 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.
- 6.3 Residents may retain personal clothing and possessions as space permits, unless to do so would infringe on the rights of others or would create a fire or safety hazard.
- 6.4 A resident shall 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. Homes shall allow visiting hours from at least 8 a.m. to 8 p.m., or longer. Visiting hours shall be posted in a public place.
- 6.6 Each resident may send and receive personal mail unopened.
- 6.7 Residents have the right to reasonable access to a telephone for private conversations. Residents shall have reasonable access to the home's telephone except when restricted because of excessive unpaid toll charges or misuse. Restrictions as to telephone use shall be in writing. Any resident may, at the resident's own expense, maintain a personal telephone or cell phone in his or her own room, subject to any restrictions imposed by a court or the resident's licensed health care provider.
- 6.8 A resident may complain or voice a grievance without interference, coercion or reprisal. Each home shall establish a written grievance procedure for resolving residents' concerns or complaints that is explained to residents at the time of admission. The grievance procedure shall include at a minimum, time frames, a process for responding to residents in writing, and a method by which each resident filing a complaint will be made aware of the Office of the Long Term Care Ombudsman and Vermont Protection and Advocacy Disability Rights Vermont as an alternative or in addition to the home's grievance mechanism.
- 6.9 Residents may manage their own personal finances. The home or licensee shall not manage a resident's finances unless requested in writing by the resident and then in accordance with the resident's wishes. The home or licensee shall 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 home.
- 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. 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.
- 6.12 Residents shall be free from mental, verbal or physical abuse, neglect, and exploitation. Residents shall also be free from restraints and seclusion as described in Section 5.14.
- 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 devolve to the guardian pursuant to applicable law.

- 6.14 Residents subject to transfer or discharge from the home, under Section 5.3 of these regulations, shall:
- 6.14.a Be allowed to participate in the decision-making process of the home concerning the selection of an alternative placement;
- 6.14.b Receive adequate notice of a pending transfer or discharge; and
- 6.14.c Be allowed to contest their transfer or discharge by filing a request for a Commissioner's hearing and for a fair hearing before the Human Services Board in accordance with the procedures in 3 V.S.A. §3091.
- 6.15 Residents have the right to refuse care to the extent allowed by law. This includes the right to discharge himself or herself from the home. The home must fully inform the resident of the consequences of refusing care. If the resident makes a fully informed decision to refuse care, the home must respect that decision and is absolved of further responsibility. If the refusal of care will result in a resident's needs increasing beyond what the home is licensed to provide, or will result in the home being in violation of these regulations, the home may issue the resident a thirty (30) day notice of discharge in accordance with section 5.3.a of these regulations.
- 6.16 Residents have the right to formulate advance directives, including DNR and clinician-ordered life-sustaining treatment (COLST) documents as provided by state law, and to have the home follow the residents' wishes.
- 6.17 ACCS residents have the right to be away from the home for voluntary leaves of more than 24 hours, unless a legally appointed guardian directs the home otherwise. ACCS residents have the right to make decisions about such voluntary leaves without influence from the home.
- 6.18 The enumeration of residents' rights shall not be construed to limit, modify, abridge or reduce in any way any rights that a resident otherwise enjoys as a human being or citizen. A ~~summary of the obligations of the residential care home to its residents~~ copy of the Residents Rights set forth in this section shall be written in clear language, large print (font size 18), given to residents on admission, and posted conspicuously in a public place in the home. ~~Such notice shall also summarize the~~ The home's grievance procedure and directions for contacting the Ombudsman Program and Vermont Protection and Advocacy, Inc. Disability Rights Vermont also shall be written in the same font size, provided to each resident, and posted in the same location as the statement of Residents' Rights.
- 6.19 Residents have a right to establish a residents' council that meets in the home. The home shall record concerns that are communicated to it as a result of the council and shall document the action taken in response.
- 6.20 Residents have a right to be informed by the home, and to have visitors informed, if any video or audio surveillance is underway in any resident areas.

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

### **7.1 Food Services**

- 7.1 The home shall provide each resident with a nourishing, palatable, well-balanced diet that meets his or her daily nutritional and special dietary needs, taking into account the preferences of each resident.

7.1.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 shall~~ provide 100% ~~of the Recommended Dietary Allowances (RDA) as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and comply with the Dietary Guidelines for Americans.~~ of the current Dietary Reference Intakes for adults age 60 and older as established by the Food and Nutrition Board of the National Academy of Sciences, National Research Council and comply with the Dietary Guidelines for Americans. Reference material for meal planning can be located at: [www.dietaryguidelines.gov](http://www.dietaryguidelines.gov)
- (3) The current week's regular and therapeutic menu shall be posted in a public place for residents and other interested parties.
- (4) The home ~~must shall~~ follow the written, posted menus. If a substitution must be made, the substitution shall be recorded on the written menu.
- (5) The home 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 ~~physician's order~~ from a licensed health care provider in the resident's record for all therapeutic diets, and the home shall ensure that the therapeutic diets are provided, including mechanically-altered diets.
- (7) The home shall maintain sufficient food supplies at hand on the premises to meet the requirements of the planned weekly menus.
- (8) No more than 14 hours shall elapse between the end of an evening meal and the morning meal.
- (9) The home shall provide or obtain appropriate education and training for its chief food service staff to ensure the proper preparation and storage of all food items. The training provided to such staff shall be documented by the home.

7.1.b Meal ~~Patterns~~ Planning Guidelines

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

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

<del>Suggested Daily</del>		
<del>Food Group</del>	<del>Servings</del>	<del>What Counts as a Serving</del>
<del>Bread, Cereal,</del>	<del>6-11</del>	<del>1 slice bread, tortilla</del>
<del>Rice, Pasta</del>		<del>½ bagel, English muffin ½ hamburger/hot dog roll, pita</del>

		<del>½ cup cooked cereal, rice, pasta</del>
		<del>1 oz ready-to-eat cereal</del>
		<del>3-4 small or 2 large crackers</del>
Fruit	2-4	<del>¾ cup 100% fruit juice</del>
		<del>1 medium apple, banana or other fruit</del>
		<del>½ cup fresh, cooked or canned fruit</del>
		<del>¼ cup dried fruit</del>
Vegetables	3-5	<del>½ cup cooked or chopped raw vegetables</del>
		<del>1 cup leafy, raw vegetables</del>
		<del>¾ cup vegetable juice</del>
Milk, Yogurt,	3 or more	<del>1 cup milk, yogurt</del>
Cheese		<del>1 ½ oz natural cheese</del>
Meat, Poultry,	2 (total of	<del>2-3 oz cooked lean meat, poultry or fish</del>
Legumes, Eggs	4-5 oz/day)	<del>½ cup cooked legumes</del>
Nuts		<del>1 egg</del>
		<del>2 tablespoons peanut butter</del>
		<del>1/3 cup nuts</del>
Fluids	8 cups	<del>Water, juice, herbal</del>
	(8 fluid oz each)	<del>tea, non-caffeinated coffee, tea</del>

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

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

#### 7.1.c Meal Service

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

#### 7.2 Food Safety and Sanitation

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

7.2.b All perishable food and drink shall be labeled, dated and held at proper temperatures:

- (1) At or below 40 degrees Fahrenheit.

(2) At or above 140 degrees Fahrenheit when served or heated prior to service.

(3) Staff shall conduct regular temperature checks of storage areas and of prepared food and shall document the date and time of each temperature check.

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

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

- 7.3.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.
- 7.3.b Areas of the home used for storage of food, drink, equipment or utensils shall be constructed to be easily cleaned and shall be kept clean.
- 7.3.c All food service equipment shall be kept clean and maintained according to manufacturer's guidelines.
- 7.3.d All equipment, utensils and dinnerware shall be in good repair. Cracked or badly chipped dishes and glassware shall not be used.
- 7.3.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.
- 7.3.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.
- 7.3.g Doors, windows and other openings to the outdoors shall be screened against insects, as required by seasonal conditions.
- 7.3.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 coverslids.
- 7.3.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 home shall launder bed and bath linens used by the residents. The home shall launder and return the residents' personal clothing ~~in order for residents to be clean, well-groomed and comfortable~~.
- 8.1.a The home shall make provisions for residents who choose to launder their own personal clothing.
- 8.1.b Clean and soiled laundry shall be separated at all times.

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

## **IX. Physical Plant**

### **9.1 Environment**

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

### **9.2 Residents' Rooms**

- 9.2.a Each bedroom shall have at least 100 square feet of useable floor space in single rooms and at least 80 square feet per bed in double-bed rooms, exclusive of toilets, closets, lockers, wardrobes, alcoves or vestibules. These specifications may be waived for beds licensed prior to the adoption of the 1987 regulations.
- 9.2.b Rooms shall be of dimensions that allow for the potential of not less than three (3) feet between beds and three feet between the bed and the side wall to facilitate cleaning and easy access.
- 9.2.c Each bedroom shall have an outside window.
  - (1) Windows shall be openable 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.
- 9.2.d The door opening of each bedroom shall be fitted with a full-size door of solid core construction.
- 9.2.e Resident bedrooms shall be used only as the personal sleeping and living quarters of the residents assigned to them.
- 9.2.f A resident shall not have to pass through another bedroom or bathroom to reach the resident's

own bedroom.

- 9.2.g ~~The home shall provide e~~Each resident ~~shall be provided with~~ the resident's own bed that shall be a standard-size full or twin bed. Roll away beds, cots and folding beds shall not be used.
- 9.2.h Each bed shall be in good repair, with a clean, comfortable mattress that is at least 6 inches thick, and standard in size for the particular bed, a pillow, bedspread, and a minimum of one (1) blanket, two (2) sheets, and one (1) pillowcase.
- 9.2.i Each resident shall be provided adequate closet and drawer space to accommodate clothing and personal needs.

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

- 9.3.a Toilet, lavatories and bathing areas shall 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 and state building accessibility requirements as enforced by the Department of ~~Labor and Industry~~Public Safety, Division of Fire Safety.
- 9.3.b There shall be a minimum of one (1) bath unit, toilet and lavatory sink, exclusively available to residents, per eight (8) licensed beds per floor. Licensed beds having private lavatory facilities (bath, toilet and lavatory sink) ~~are shall not be not~~ included in this ratio.
- 9.3.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.
- 9.3.d Each bathtub and shower shall be constructed and enclosed so as to ensure adequate space and privacy while in use.
- 9.3.e Resident lavatories and toilets shall not be used as utility rooms.

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

- 9.4.a All homes shall provide at least one (1) well-lighted and ventilated living or recreational room and dining room for the use of residents.
- 9.4.b Combination dining and recreational rooms are acceptable but must be large enough to serve a dual function.
- 9.4.c Dining rooms shall be of sufficient size to seat and serve all residents of the home at the same time.
- 9.4.d Smoking shall not be permitted in any area of the home, with the exception of the manager's living quarters if the manager lives onsite. The home may designate an area outside the home as a smoking area, so long as its location does not have a negative impact on the residents and staff, and noncombustible safety-designed ashtrays or receptacles are provided.~~Smoking shall be permitted only in designated areas and the home must ensure that residents who object to smoke have "smoke free" dining or recreation space.~~

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

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

## **9.6 Plumbing**

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

## **9.7 Water Supply**

- 9.7.a Each home 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.
- 9.7.b If a home 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.
- 9.7.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.

## **9.8 Heating**

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

## **9.9 Ventilation**

- 9.9.a Homes shall be adequately ventilated to provide fresh air and shall be kept free from smoke and objectionable odors.
- 9.9.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.

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

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

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

## **9.11 Disaster and Emergency Preparedness**

- 9.11.a The licensee or manager of each home shall 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 home.
- 9.11.b If the home 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.

9.11.c Each home shall have in effect, and available to staff and residents, written copies of an emergency plan for the protection of all persons in the event of fire, for keeping residents in place, for evacuating residents to areas of refuge, and for ~~the evacuation of~~ the building when necessary. All staff shall be instructed periodically and kept informed of their duties under the plan.

(1) The emergency plan shall include a special staff response, including the fire protection procedures needed to ensure the safety of every resident;

(2) The emergency plan shall be amended or revised whenever any resident with needs is admitted to the home;

(3) All staff shall be periodically instructed and kept informed with respect to their duties and responsibilities under the emergency plan and shall review the instructions not less than every two (2) months; and

(4) A copy of the emergency plan shall be readily available at all times within the home.

9.11.d Emergency egress and fire drills shall be conducted not less than six (6) times per year on a bimonthly basis, with not less than two drills conducted during the night when residents are sleeping.

(1) The emergency drills may be announced to the residents in advance.

(2) The drills shall involve the actual evacuation of all residents to an assembly point, as specified in the emergency action plan, and shall provide residents with experience in egressing through all exits and means of escape required by the fire code. If the facility has a "shelter-in-place" plan, there shall be written evidence of the agreement with the local fire department and the Division of Fire Safety readily available.

(3) Actual exiting from windows shall not be required to comply with this requirement; opening the window and signaling for help shall be an acceptable alternative.

(4) If the home has any residents classified as impractical for evacuation, those residents who cannot meaningfully assist in their own evacuation or who have special health problems shall not be required to actively participate in the drill. ~~Fire drills shall be conducted on at least a quarterly basis and shall rotate times of day among morning, afternoon, evening, and night. The date and time of each drill and the names of participating staff members shall be documented.~~

9.11.e The home shall train all residents participating in the emergency plan in the proper actions to be taken in the event of fire.

(1) The training shall include the actions for a resident to take if the primary escape route is blocked.

9.11.f At least one emergency drill per year shall include a full evacuation of all residents, unless the home's emergency plan has been reviewed and approved by the Division of Fire Safety and allows residents to shelter in place.

9.11.g The home shall document the date, time, names of participating staff and evacuation time for all emergency evacuation drills.

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

**X. Pets**

- 10.1 Pets may visit the home providing the following conditions are met:
  - 10.1.a The pet owner must provide evidence of current vaccinations.
  - 10.1.b The pet must be clean, properly groomed and healthy.
  - 10.1.c The pet owner is responsible for the pet's behavior and shall maintain control of the pet at all times.
- 10.2 Pets, owned by a resident or the home, may reside in the home providing the following conditions are met:
  - 10.2.a The home shall ensure that the presence of a pet causes no discomfort to any resident.
  - 10.2.b The home shall ensure that pet behavior poses no risk to residents, staff or visitors.
  - 10.2.c The home must have procedures to ensure that pets are kept under control, fed, watered, exercised and kept clean and well-groomed and that they are cleaned up after.
  - 10.2.d Pets must be free from active disease, receive regular veterinarian care and are vaccinated against common diseases, including leukemia, heartworm, hepatitis, leptosporosis, parvo, worms, fleas, ticks, ear mites, and skin disorders, and must be current at all times with rabies and distemper vaccinations.
  - 10.2.e Pet health records shall be maintained by the home and made available to the public.
  - 10.2.f The home shall maintain a separate area for feeding cats and dogs other than the kitchen or resident dining areas.

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

- 11.1 A resident's money and other valuables shall be in the control of the resident, except where there is a guardian, attorney in fact (power of attorney), or representative payee who requests otherwise. The home may manage the resident's finances only upon the written request of the resident. There shall be a written agreement stating the assistance requested, the terms of same, the funds or property and persons involved.
- 11.2 If the home manages the resident's finances, the home must keep a record of all transactions, provide the resident with a quarterly statement, and keep all resident funds separate from the home or licensee's funds.
- 11.3 The personal property of the resident shall be available for the resident's use and securely maintained when not in use.
- 11.4 The resident shall not be solicited for gifts or other consideration by persons connected with the home, in any way.
- 11.5 When it becomes apparent that a resident is no longer capable of managing funds and/or property, the licensee shall contact the resident's legal representative if any, ~~or the next of kin.~~ If there is no legal representative ~~or next of kin,~~ the licensee shall contact the licensing agency resident's next of kin to request that a legal guardianship be obtained.
- 11.6 When a resident is absent without explanation for a period of thirty-one (31) days and there is no responsible person, the licensee shall hold the property for six (6) months. At the conclusion of this period, the property shall be transferred to the selectmen-selectboard of the town.
- 11.7 Each home shall develop and implement a written policy regarding resident's personal needs. The policy shall be explained to the resident upon admission, with a copy provided to the resident at that time.
  - 11.7.a The personal needs policy shall include a provision that recipients of Supplemental Security

Income (SSI) shall retain from their monthly income an amount adequate to meet their personal needs exclusive of all other rates, fees or charges by the home. The amount shall be sufficient to meet such personal needs as clothing and incidental items, reading matter, small gifts, toiletries, occasional foods not provided by the home and other such items.

- 11.7.b For SSI or Medicaid recipients in homes participating in ACCS, the amount shall be at least as much as the personal needs allowance provided Medicaid recipients in nursing homes as set by federal and state law.
- 11.8 The licensee, the licensee's relative or any staff member shall not be the legal guardian, trustee or legal representative for any resident other than a relative. The licensee or any staff of the home are permitted to act as the resident's representative payee according to Social Security regulations 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 home may solicit, offer or receive a gift, including money or gratuities, from a resident. Nominal gifts, such as candy or flowers that can be enjoyed by all staff, are permissible.

## **XII. Nursing Home Level of Care**

12.1.a The provision of nursing home level of care means the provision of services that require specialized knowledge, judgment and skill, all of which meet the standards of nursing as set forth in 26 V.S.A. § 1572. A home that wishes to admit or retain a resident who requires nursing home level of care shall obtain prior written approval from the licensing agency in the form of a variance and shall demonstrate to the licensing agency's satisfaction that it has the capacity to provide the necessary care and services.

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

- (1) The nursing services required are either:
  - i. Provided fewer than three times per week; or
  - ii. Provided for up to seven days a week for no more than thirty (30) days and the resident's condition is improving during that time and the nursing service provided is limited in nature; or
  - iii. Provided by a Medicare-certified hospice program; and
- (2) The home has a registered nurse on staff, or a written agreement with a registered nurse or home health agency, to provide the necessary nursing services and to delegate related appropriate nursing care to qualified staff; and
- (3) The home is able to meet the resident's needs without detracting from services to other residents; and
- (4) The home has a uniform consumer disclosure that is provided to prospective residents before or at the time of admission, which explains what nursing care the home provides or arranges for, how it is paid for and under what circumstances the resident will be required to move to another level of care; and
- (5) Residents receiving such care are fully informed of their options and agree to such care in the residential care home.

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

- retain the resident. If a home's registered nurse assesses a potential resident and determines that the potential resident requires nursing home level of care, the home shall apply for, and be granted, a variance prior to admitting the individual to the home.
- 12.3 A home with residents who are assessed as needing nursing home level of care shall have sufficient staff to provide nursing and related services to attain or maintain the highest practicable physical, mental and psycho-social well-being of each resident, as determined by resident assessments and individual plans of care or as specified by the licensing agency.
- (1) The home shall have at least one registered nurse on the premises or available on-call who is has the capacity to assess and provide nursing care on a twenty-four (24) hour basis, seven (7) days a week.
  - (2) A home with six (6) or more nursing home level of care residents shall have at least two (2) caregivers on duty on each shift. The second caregiver on the night shift is not required to be awake.
  - (3) A home with residents who are assessed as being incapable of self-evacuation shall have sufficient staff during each shift to ensure the safe evacuation, if applicable, of all residents, including those needing assistance.
  - (4) The registered nurse shall be available onsite at least one (1) hour per week per nursing home level of care resident.
  - (5) There shall be sufficient direct care staff onsite to ensure at least two (2) hours per day of assistance with personal care, per nursing home level of care resident.
- 12.4 A home with nursing home level of care residents shall care for its residents in a manner and in an environment that promotes the maintenance or enhancement of each resident's quality of life.
- 12.4.a The home shall provide, based on the preferences of each resident, an ongoing program of activities designed to meet the interests of each resident, encouraging both independence and interaction in the community.
- 12.5 Based on the comprehensive assessment of a resident, the home shall ensure that residents receive the treatment and care necessary to maintain or achieve the highest practicable well-being in accordance with professional standards of practice, the comprehensive person-centered care plan, and the resident's choices.
- 12.5.a The home shall ensure that a resident's abilities in activities of daily living do not diminish unless the circumstances of the resident's clinical condition demonstrate that diminution was unavoidable.
- (1) The home shall provide services to any resident who is unable to carry out the activities of daily living necessary to maintain mobility, good nutrition, grooming, and personal and oral hygiene.
- 12.5.b The home shall ensure that each resident's medication regimen, if any, is free from unnecessary medications. An unnecessary medication is any medication when used:
- (1) In excessive dose (including duplicative drug therapy; or
  - (2) For excessive duration; or
  - (3) Without adequate monitoring; or
  - (4) Without adequate indications for its use; or
  - (5) In the presence of adverse consequences that indicate the does should be reduced or discontinued; or
  - (6) Any combinations of the reasons stated in (1) – (5) above.
- 12.5.c Based on a comprehensive assessment of a resident, the home shall ensure the following:

- (1) Residents who have not used psychotropic drugs are not given these drugs unless the medication is necessary to treat a specific condition as diagnosed documented in the clinical record;
  - (2) Residents who use psychotropic drugs receive gradual dose reductions, and behavioral interventions, unless clinically contraindicated, in an effort to discontinue these drugs and/or ensure the resident is receiving the lowest effective dose; and
  - (3) Residents do not receive psychotropic drugs pursuant to an PRN order unless that medication is necessary to treat a diagnosed, specific condition that is documented in the clinical record;
- 12.6 A home with any nursing home level of care residents shall submit a report of all nursing home level of care residents, on a quarterly basis, on a form provided by the licensing agency.
- 12.7 Prior to installing a side or bed rail, the licensee shall attempt to use appropriate alternatives. If a side or bed rail is used, the licensee shall ensure the correct installation, use, assessment and maintenance of the rail(s).
- 12.8 A home with any nursing home level of care residents shall develop a quality improvement program that identifies and addresses quality issues.
- 12.8.a The licensee shall assemble and employ an internal quality improvement committee.
- (1) The quality improvement committee shall consist of the manager of the home, a registered nurse, at least one other direct care staff member, a resident, and other members as needed to achieve program objectives.
  - (2) The quality improvement committee shall meet at least quarterly to identify issues with quality improvement, to develop and implement appropriate plans of action to correct identified quality deficiencies, and to review and act upon resident satisfaction surveys.
  - (3) The quality improvement committee shall allow residents to have meaningful opportunities to provide input, to discuss grievances, and to review plans of action.
- 12.8.b The home shall conduct resident satisfaction surveys at least annually and shall compile the results of such surveys to identify issues to be addressed by the quality improvement committee.
- 12.8.c The quality improvement committee shall maintain the confidentiality of individual resident information from satisfaction surveys, from input at committee meetings, or from the complaint or grievance process, with specific complaints and grievances reviewed only by appropriate staff and outside parties, as requested by the resident. Such information shall be made available to the licensing agency upon request.
- 12.8.d No good faith efforts by the quality improvement committee to identify and correct quality deficiencies shall be used as a basis for sanctions.

## Assisted Living Residence Regulations

### I. General Provisions

- 1.1 Introduction. These regulations are to be used in conjunction with the Residential Care Home Licensing Regulations, which are designed to protect the welfare and rights of residents and to ensure that residents receive quality care. The regulations also are intended to ensure that homes licensed as assisted living residences promote resident individuality, privacy, dignity, self-direction, and active participation in decision-making.
- a. All provisions and requirements of the Residential Care Home Licensing Regulations pertaining to Level III homes shall apply to assisted living residences unless specifically excepted as set forth in section II below.
- b. The intention of the Department of Disabilities, Aging and Independent Living is to assist operators of assisted living residences to attain and maintain compliance with these regulations.
- 1.2 Statutory Authority. Assisted living residences are subject to the provisions of 33 V.S.A. Chapter 71. The Agency of Human Services has designated the Department of Disabilities, Aging and Independent Living, Division of Licensing and Protection, as the licensing and regulatory agency for assisted living residences as defined at 33 V.S.A. §7102(11).
- 1.3 Statement of Intent. Upon the effective date of these regulations, all assisted living residences in Vermont will 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 or licensee shall be in good standing with the Vermont Department of Taxes, pursuant to 32 V.S.A. §3113. Failure 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 to these regulations may be subject to denial of license, monetary fine, suspension, and/or revocation of license.
- 1.7 Appeals. An applicant, licensee, or resident aggrieved by a decision of the licensing agency pursuant to these regulations may file a request for a fair hearing with the Human Services Board as provided in 3 V.S.A. §3091.
- 1.8 License Required. The terms assisted living or assisted living residence or words to that effect may not be used by any facility in its title, brochure, admission agreement, or other written or promotional materials unless the facility has a valid license to operate as an assisted living residence issued by the Department of Disabilities, Aging and Independent Living.

## **II. Exceptions**

To obtain and maintain a license to operate an assisted living residence an applicant or licensee must meet all of the requirements of the Residential Care Home Licensing Regulations, with the exception of the following sections of those regulations:

2.1 Eligibility: 5.1 (a) and 5.1(b).

2.2 Admission: 5.2(d).

2.3 Physician Services: 5.8(a).

2.4 Level of Care and Nursing Services: 5.9(a), (b) and (d).

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

2.6 Toilet, Bathing, and Lavatory Facilities: 9.3(b)

## **III. Definitions**

3.1 "Aging in place" means to remain in a residence despite physical or mental decline that might occur with aging or with disability, as described in 6.3.

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

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

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

## **IV. Variances**

Variances from these regulations may be granted by the licensing agency using the same criteria and procedures as set forth in the Residential Care Home Licensing Regulations, Section III.

## **V. Licenses**

5.1 The licensing agency shall not issue an assisted living residence license to an applicant unless all of the applicable requirements of the Residential Care Home Licensing Regulations for a Level III home are met.

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

## **VI. Resident Care and Services**

6.1 Eligibility. The licensee may accept and retain any individual 18 years old or older, including those whose needs meet the definition of nursing home level of care if those needs can be met by the assisted living residence, with the following exceptions:

- a. The licensee shall not admit any individual who has a serious, acute illness requiring the medical, surgical, or nursing care provided by a general or special hospital; and
- b. The licensee shall not admit any individual who has the following equipment, treatment, or care needs: ventilator, respirator, stage III, or IV pressure decubitus ulcer, naso-pharangeal, oral or trachial suctioning or two-person assistance to transfer from bed or chair or to ambulate.

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

6.2 Admission. The licensee may require a lease in addition to the written admission agreement required pursuant to the Residential Care Home Licensing Regulations.

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

- a. An ADL score of 10 or less in the daily activities of eating, transfers, toileting, and bed mobility, provided that the mobility, ambulation, and transfer needs can be met by one staff person;
- b. A cognitive impairment at a moderate or lesser degree of severity; or
- c. Behavioral symptoms that consistently respond to appropriate intervention.

6.4 Physician Services. Residents who have an identified acute or chronic medical problem or who is deemed to need nursing overview or supervision shall be under the continuing general supervision of a physician of their choosing.

6.5 Involuntary Discharge of Residents. The expectation is that individuals will be permitted to age in place as set forth in 6.3 and not be required to leave an assisted living residence involuntarily. In those instances in which a resident is required to leave, however, the provisions of this section shall supersede the requirements of the Residential Care Home Licensing Regulations, Section 5.3 a.. The licensee shall not initiate a discharge because a resident's choice might pose a risk if the resident is competent and the choice is informed and poses a danger or risk only to the resident. Otherwise, an involuntary discharge of a resident may occur only when:

- a. The resident presents a serious threat to self that cannot be resolved through care planning and the resident is incapable of engaging in a negotiated risk agreement;
- b. The resident presents a serious threat to residents or staff that cannot be managed through interventions, care planning, or negotiated risk agreements in the assisted living residence;
- c. A court has ordered the discharge or eviction;
- d. The resident failed to pay rental, service, or care charges in accordance with the admission agreement;



- e. The resident refuses to abide by the terms of the admission agreement; or
  - f. If the licensee can no longer meet the resident's level of care needs in accordance with 6.3.
- 6.6 Refusals and Non-Duplication. The licensee shall not provide or arrange any service for a resident that the resident refuses or chooses to obtain from another source.
- 6.7 Care Plans. The licensee, the resident, and/or the resident's legal representative shall work together to develop and maintain a written resident care plan for those residents who require or receive care. The care plan shall describe the assessed needs and choices of the resident and shall support the resident's dignity, privacy, choice, individuality, and independence. The licensee shall review the plan at least annually, and whenever the resident's condition or circumstances warrant a review, including whenever a resident's decision, behavior, or action places the resident or others at risk of harm or the resident is incapable of engaging in a negotiated risk agreement.
- 6.9 Services. The licensee shall have the capacity to provide the following services:
  - a. A daily program of activities and socialization opportunities, including periodic access to community resources; and
  - b. Social services, which shall include information, referral, and coordination with other appropriate community programs and resources such as hospice, home health, transportation, and other services necessary to support the resident who is aging in place.
- 6.10 Record Checks. The licensee shall require the resident as a condition of occupancy to conduct abuse registry and Vermont Criminal Information Center record checks for personal and health care services providers not employed by a licensed or certified agency.
- 6.11 Uniform Consumer Disclosure. A licensee shall state in its licensing application and in a uniform consumer disclosure the services it will provide, the public programs or benefits that it accepts or delivers, the policies that affect a resident's ability to remain in the residence, and any physical plant features that vary from the assisted living residence requirements found in Section XI.
  - a. The uniform consumer disclosure shall be completed on a form provided by the licensing agency and shall be kept on file by the licensee.
  - b. The uniform consumer disclosure shall describe all service packages, tiers, and rates.
  - c. The uniform disclosure form shall include a statement that rates are subject to change, including rate changes due to increased care needs, and describe the situations in which the change(s) could occur.
  - d. The disclosure shall be provided:
    - i. to residents prior to or at admission and at any time it is changed or is requested by the resident; and
    - ii. to the public upon request.
  - e. The availability of a uniform consumer disclosure shall be noted prominently in all marketing brochures and written materials.
  - f. A licensee who has specialized programs such as dementia care shall include a written statement of philosophy and mission and a description of how the assisted living residence

can meet the specialized needs of residents in the uniform disclosure form and in the admission agreement.

- 6.12 Notice of Changes. The licensee shall give each resident and the licensing agency a written ninety-day notice when its services, rates, retention policies, or physical plant will change so as to significantly enhance or significantly restrict the potential for aging in place.
- 6.13 Training. The licensee shall provide training in the philosophy and principles of assisted living to all staff. Staff who have any direct care responsibility shall have training in communications skills specific to persons with Alzheimer's Disease and other types of dementia.
- 6.14 Resident Records. In addition to those documents required by the Residential Care Home Licensing Regulations, the licensee shall ensure resident records include:
- a. Copies of any negotiated risk agreements and care plans; and
  - b. Copies of lease agreements, if applicable and/or required.
- 6.15 Licensee Records. The licensee shall maintain current records of any contracts and/or subcontracts with outside providers, agencies, suppliers, and public programs. Residents shall be given access to such documents and provided a copy upon request.
- 6.16 Resident Councils. Residents shall have the right to organize and operate resident councils, with staff or manager assistance by resident request only.

## **VII. Policies and Procedures**

- 7.1 Policies. In addition to those policies required under the Residential Care Home Licensing Regulations, the licensee shall establish policies and procedures regarding:
- a. Unexplained absences of residents;
  - b. Behavioral symptoms of the residents, including but not limited to wandering, sexually inappropriate or socially disruptive behaviors, or resistance to care;
  - c. Managing residents with declining cognitive status, including incompetence, and setting forth when and how a legal guardian will be obtained;
  - d. Negotiated risk agreement process, including the identity of the responsible staff person; and
  - e. Use by the residents of the community kitchen, if applicable, as well as other common areas.
- 7.2 Quality Improvement. The licensee shall develop a quality improvement program that identifies and addresses quality issues. At a minimum, the licensee shall:
- a. Have an internal quality improvement committee that shall:
    - i. consist of the director of the assisted living residence, a registered nurse, at least one other direct care staff member, a resident, and other representatives as needed to achieve program objectives;
    - ii. meet at least quarterly to identify issues with respect to quality improvement, to develop and implement appropriate plans of action, and to review and act upon resident satisfaction surveys.

- iii. allow residents to have meaningful opportunities to provide input, to discuss grievances, and to review plans of action.
- b. Conduct resident satisfaction surveys at least annually and compile the results of such surveys to identify issues to be addressed by the quality improvement committee.
- c. Maintain confidentiality of individual resident information from satisfaction surveys, input at committee meetings, or from the complaint or grievance process, with specific complaints and grievances reviewed only by appropriate staff and outside parties, as requested by the resident. Such information shall be made available to the licensing agency upon request.

### **VIII. Agreements and Charges**

- 8.1 The purchase of services in an assisted living residence shall be optional and solely the voluntary choice of a resident. Residents have the right to arrange for third-party services not available through the assisted living residence through a provider of their choice.
- 8.2 The terms of occupancy of a resident unit, together with any utilities, maintenance or management services provided by the licensee, shall be included in a written admission agreement and, if applicable, a written lease separate from the admission agreement. When a separate lease agreement regarding the resident unit is entered into, the existence of that agreement shall be noted in the admission agreement.
- 8.3 The licensee shall not vary charges for the occupancy of the resident unit and for utilities based on the resident's long-term care needs. The licensee may charge different amounts based on the size of the unit, the included amenities, and/or any published sliding fee scale or system of housing subsidies administered by the licensee.
- 8.4 The licensee shall charge for personal care services to meet a resident's health and welfare needs only as bundled daily, weekly, or monthly rates. If a licensee has rates that vary according to tiers of services, the rates for the tiers may vary according to the amount and level of services provided to meet the different levels of need of residents. The differences between the tiers of services must be clearly defined and capable of measurement.
- 8.5 A licensee shall establish a rate to meet the needs and care plans of all residents assessed as below the Nursing Home Level of Care Guidelines, which shall be known as the basic care package. A licensee may establish a rate for independent residents who do not purchase a personal care package, a rate that shall be known as an independent package. For residents who meet nursing home levels of care within the mandatory scope of care for assisted living, the licensee shall have two tiers of services and rates. A licensee who has a policy of retaining residents above the mandatory scope of care for assisted living shall disclose any definitions, tiers, and methodologies used to determine the levels of care and bundled rates.
- 8.6 A licensee may charge on a per service basis only for those services that are not required by Assisted Living Residence Licensing Regulations. Such services may include, but are not limited to, additional transportation and housekeeping services, hair dressing, social outings, daily papers, garage space, and any activities in addition to those daily activities provided to all residents.

### **IX. Negotiated Risk**

- 9.1 Whenever the licensee determines that a resident's decision, behavior, or action places the resident or others at risk of harm, the licensee shall initiate a service negotiation process to address the identified risk and to reach a mutually agreed-upon plan of action.

- 9.2 The licensee shall initiate the negotiated risk process by notifying the resident and, if applicable, the legal representative, verbally and in writing. The licensee shall also give notice to the resident and legal representative that the state Long Term Care Ombudsman is available to assist in the process.
- 9.3 If the licensee and the resident reach agreement, the mutually agreed upon plan shall be in writing.
- a. The written plan shall be dated and signed by both parties to the negotiation;
  - b. Each party to the negotiation shall receive a copy of the written plan; and
  - c. A copy of the plan shall be attached to and incorporated into the resident's care and service plan.
- 9.4 If the licensee and the resident are not able to reach agreement, the licensee shall notify the state long term care ombudsman if the failure to reach agreement results in a notice of discharge.
- 9.5 Negotiated risk discussions and the plan shall be resident specific.

## **X. Nutrition and Food Services**

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

## **XI. Physical Plant**

- 11.1 Resident Units. All resident units must be private occupancy unless a resident voluntarily chooses to share the unit.
- 11.2 At a minimum, resident units shall include the following:
- a. 225 square feet per unit, excluding bathrooms and closets, unless otherwise provided by these regulations.
  - b. A private bedroom, private bathroom, living space, kitchen capacity, adequate space for storage, and a lockable door, unless otherwise permitted by these regulations. Studio/efficiency apartments that offer a private bedroom, living space and kitchen capacity in one large room, and include a private bathroom shall meet these requirements.
  - c. The bathroom shall be a separate room designed to provide privacy and shall be equipped with a toilet, with grab bars, a sink, hot and cold running water, a shower or bathtub, a mirror, and towel racks. Showers or bathtubs shall have non-skid surfaces and safety grab bars.
  - d. Kitchens shall consist of a food preparation and storage area that includes, at a minimum, a refrigerator with freezer, cabinets, counter space, sink with hot and cold running water, a stove or microwave that can be removed or disconnected, and electric outlets.
  - e. Each unit shall provide adequate closet space for clothing and belongings.
  - f. All doors in units, including entrance doors, shall be accessible or adaptable for wheelchair use. Entrance doors to units shall have a locking device and shall be equipped with hardware that is accessible.
  - g. All unit windows shall be made of clear glass and permit viewing to the outside.

- h. Light switches in the units shall be located at the entry, in the bedroom, and in the bathroom to control one or more light fixtures.
- i. Each unit shall have at least one telephone jack.
- j. Each unit shall have individual temperature controls for heating and cooling.
- k. Each unit shall be equipped with an emergency response system that will alert the on-duty staff.
- l. Each unit shall be built in conformance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) or the equivalent state building code specifications.

### 11.3 Pre-existing structures.

- a. The licensing agency may grant a variance for pre-existing structures that differ from the minimum requirements set forth above. If such a variance is granted, the specifics of the structural limitations and the terms of the variance shall be stated on the license. The licensee shall include the information in the uniform disclosure form.
- b. The licensing agency may grant physical plant variances for pre-existing structures in the following instances:
  - i. Resident units that do not meet the requirements for private kitchen space, but the facility has a community kitchen that includes a refrigerator, sink, cabinets for storage, stove or microwave oven, and a food preparation area. A community resident kitchen shall not include the kitchen used by the assisted living residence staff for the preparation of resident or employee meals, or for the storage of goods.
  - ii. Resident units in pre-existing structures not previously licensed as residential care homes must have at least 160 square feet of clear living space excluding the bathroom, closet(s), alcoves, and vestibules.
  - iii. If the pre-existing structure is a licensed residential care home that was in continuous operation as a licensed residential care home prior to July 1998, the resident unit clear living space, excluding the bathroom, closet(s), and alcoves, must be at least 100 square feet.

### 11.4 Common Areas

- a. The assisted living residence shall have at least two common areas for use by all residents. The common areas shall be designed to meet resident needs and shall be accessible for wheelchair use. The common areas shall provide residents with sufficient space for socialization and recreational activities.
- b. At least one common area shall be available for resident use at any time, provided such use does not disturb the health, safety, and well being of other residents.

### 11.5 Other Common Space

- a. If an assisted living residence has a community kitchen:
  - i. Residents shall have unlimited access to the kitchen; and
  - ii. Resident shall have individual space in which to store personal food and supplies.
- b. Access to private or public outdoor recreation areas shall be available to residents.

- c. There shall be at least one public restroom in the assisted living residence that meets applicable local, state, and federal accessibility laws and guidelines. It shall be convenient to the common areas.
- d. The assisted living residence shall have accessible common dining space outside residential units sufficient to accommodate residents.

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**Appendix A – Scope and Severity Grid**

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

## Appendix B – Nursing Home Level of Care Definition/Interpretation

### Activities of Daily Living (ADL)

1. Individuals who require **extensive or total assistance** with at least one of the following Activities of Daily Living (ADL):

Toilet use, Bed mobility, Eating, or Transferring AND require **at least limited assistance with any other ADL.**

2. Individuals who require **extensive to total assistance** on a daily basis with at least one of the following ADLs:

Bathing, Dressing, or Physical Assistance to Walk

### Cognitive and Behavioral

3. Individuals who have a **severe** impairment with decision-making skills.

4. Individuals who have a **moderate** impairment with decision- making skills AND one of the following behavioral symptoms/conditions, which **occurs frequently and is not easily altered:**

Wandering, Verbally Aggressive Behavior, Resists Care, Physically Aggressive Behavior, or Other Behavioral Symptoms which require management/supervision

5. Individuals who have any level of impaired judgment or impaired decision-making skills that require **constant or frequent direction** to perform at least one of the following:

Bathing, Dressing, Eating, Toilet Use, Transferring, or Personal Hygiene

6. Individuals who exhibit at least one of the following behaviors requiring a controlled environment to maintain safety for self:

Constant or Frequent Wandering, Persistent Physically or Verbally Aggressive Behavior, or Other Behavioral Symptoms which require management/supervision

### Skilled Nursing

7. Individuals who have at least one of the following conditions or treatments that require skilled nursing assessment, monitoring, and care **on a daily basis:**

Stage 3 or 4 Skin Ulcers, Ventilator/ Respirator, IV Medications, Naso-gastric Tube Feeding, End Stage Disease, Parenteral Feedings, 2nd or 3rd Degree Burns, or Suctioning

8. Individuals who have an unstable medical condition, chronic condition or treatment that requires skilled nursing assessment, monitoring and care **on less than daily or daily basis** related to, but not limited to at least one of the following:

Wound Care, Respiratory Care, Enteral Nutrition, Neurological Care, Cancer Treatment, Complex Medications/Injections, Severe Pain Management, End Stage Disease



\*If on a **less than daily** basis, the individual must also require an aggregate of other services (personal care, nursing care, medical treatments and/or therapies) on a daily basis.

9. Individuals who require skilled teaching **on a daily basis** (exceeding 30 days) to regain control of, or function with at least one of, the following:

Gait training, Speech, Range of Motion, Bowel or Bladder Training

**\*The worksheet attached may be used as a tool to determine if a resident meets nursing home level of care. (to be developed)**

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