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TO: Legislative Committee on Administrative Rules

FROM: Leah Burdick, Staff Attorney, Elder Law Project

SUBJECT: Department of Children and Families, Vermont Homelessness Response Continuum Emergency Rule 26-E03

DATE: October 12, 2026

Vermont Legal Aid (VLA) has a long history of advocacy throughout Vermont on behalf of low-income individuals, individuals with disabilities, and individuals aged 60 and older, including on the issue of emergency housing assistance. We represent individuals experiencing homelessness and have testified about legislative changes to these programs and the applicability of rules on many occasions. We have serious concerns about the Department's drafting and implementation of the Vermont Homelessness Response Continuum (VHRC) emergency rules. We urge this committee to object to these rules as contrary to the legislative intent of Act 143, require that the Department correct and revise the emergency rules in accordance with the legislative purpose and intent of Act 143, and submit a new draft to this committee within 30 days for additional review.

The emergency rules do not align with legislative purpose or intent of Act 143 because they create multiple unnecessary barriers and administrative burdens for applicants and participants, especially those with disabilities. "The continuum shall prioritize . . . equitable access to emergency and permanent housing." 33 VSA § 2202(b). As a result, the emergency rules violate Title II of the Americans with Disabilities Act, which provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."[1] Due to these barriers, the proposed rules do not even comply with the Agency of Human Services' own policies for non-discrimination and accessibility.[2]

The emergency rules as drafted create significant barriers to entry for applicants and participants. The specific rules we object to are: 1) the criteria for termination and the 12-month timeframe for reinstatement after termination of services, 2) the Department's overly-restrictive

[1] 42 U.S.C.A. § 12132.
[2] Agency of Human Services, *Nondiscrimination Policy/Grievance Policy, 1.11* (Revised 3/10/2023); Agency of Human Services, *Accessible and Inclusive Communications Policy, 1.06* (9/1/2022); Department of Children and Families, *Nondiscrimination Policy/Grievance Policy* (Revised 3/31/2023).

review of their discretion to grant extensions to the 70-day limit, and 3) repeated assessments as an administrative barrier to shelter.

Part 10 Termination and Reinstatement

Section 1.03(a) Criteria for Termination

Section 1.03 does not accurately implement 33 V.S.A. § 2210(d) and therefore is contradictory to legislative intent. Act 143 authorizes the immediate "termination of services *as necessary* for the safety of others" (emphasis added) when a household member engages in criminal activity or qualifying misconduct. The rule instead authorizes "termination from the Program for the safety of Program staff, community partners, or other Program participants." The rule does not use the referenced language "as necessary" contained in the statute. These differences are substantive. First, the statute authorizes termination of those services that must be ended to address the identified safety risk; it does not authorize the Department to terminate a household's participation in the entire Program, including other services that can be provided safely.

Second, the phrase "as necessary" in the statute requires an individualized determination that terminating a particular service is necessary to protect others. The rule omits that limitation and appears to authorize termination whenever the Department identifies a safety concern, without requiring it to determine whether termination is necessary or whether the risk could be addressed through a change in placement, service provider, service conditions, or other less sweeping response. LCAR should object to Part 10, Section 1.03 because it expands the Department's termination authority beyond the plain language of Act 143. The rule should be revised to track the statute and require the Department to identify the specific safety risk, determine which services must be terminated to address that risk, and terminate only those services for which termination is necessary to protect the safety of others.

Additionally, the use of "criminal activity" in Part 10, Section 1.03(a) is concerning because, unlike "misconduct" which is defined in Act 143, "criminal activity" is not clearly defined and may be interpreted too broadly. Not all criminal activity threatens the health or safety of others or justifies termination of services. A vague standard creates a risk of inconsistent application and may result in households being terminated for conduct unrelated to the safety concerns contemplated by Act 143. LCAR should object to this rule and require the Department to revise this section to clearly require a nexus, or connection, between the alleged criminal conduct and a threat to the health or safety of others. Any conduct that may result in termination should be clearly defined so that individuals understand the standards that apply to them, especially when the Department intends to punish individuals with a 12-month disqualification for certain categories of termination.

Section 3.02: Timeframes for Reinstatement

Part 10, Section 3.02 of the rule imposes a 12-month penalty period of ineligibility from the continuum for these violations: 1) providing false, misleading, or incomplete demographic/eligibility information; 2) refusing suitable housing placements two or more times; and 3) criminal activity, or misconduct not related to disability or domestic violence. But Act 143 does not authorize any penalty periods at all. Section 2210 of the Act gives the Department the authority to terminate benefits in these circumstances. Section 2216(10) directs the Department to adopt a rule for the process of reinstatement of services, but nothing in the Act grants the Department the authority to institute such a lengthy penalty for these specific criteria.

A 12-month penalty is inconsistent with VHRC's primary stated purpose of preventing and addressing homelessness, as stated in Section 2 of Act 143: "It is the intent of the General Assembly that (1) unsheltered homelessness be eliminated and that homelessness in Vermont be rare, brief, and nonrecurring…"This length of ineligibility does not comply with the purpose and intent of Act 143, which created a continuum of services designed to be individualized to meet the needs of households experiencing homelessness. The Department characterizes this penalty as a "fixed 12-month bar" in their response to initial comments on these rules. Such a fixed concept violates the intent of Act 143, which created a continuum of services designed to be individualized and administered to promote maximum flexibility to meet the needs of these households. A mandatory 12-month period of ineligibility is not individualized to the circumstances that led to the termination, the participant's efforts to address the underlying issue, or the severity of the conduct.

For households experiencing homelessness, being denied access to services for an entire year can have severe consequences, not only for the people out on the street, but also for the communities that now must support more people who are unsheltered due to this rule. The 12-month penalty period is overly punitive, arbitrary, unreasonable and against legislative intent. LCAR should object to this rule as violating legislative intent and require the Department to revise this period of ineligibility to be flexible to the circumstances of the participant.

Part 8, Rule 5.00 Extensions

This rule limits the discretion of the Department to just four statutory criteria to qualify for an extension in the motel program when a person has run out of days. In its response to earlier comments on the overly restrictive extension rule, the Department stated that "Act 143 gives the Department discretion to grant extensions to four specific categories of households. The Department does not have the authority to expand its discretion to grant extensions beyond these four categories." The Department mischaracterizes that section of the statute. Act 143 does not limit the Department's discretion to the four listed categories. Section 2212 (b) explicitly says "The Department may grant extensions to the time limits established in subsection (a) of this section pursuant to criteria adopted in rule, *including for* (….)" (emphasis added). If the legislature intended to limit Department discretion to only those four criteria listed in statute,

they would have done so. Instead, the drafters used the word "including" to direct the Department's attention to those categories of households they considered particularly appropriate for extensions. Nowhere in Act 143 does it dictate that the Department *only* consider extensions for those specific categories. The rule as written violates the intent and plain language of the Act.

Part 8, Rule 5.04 grants the Department 10 days to decide an extension request. The Department is regularly waiting until the last minute to make these decisions. This delay would seem contrary to the intent of Act 143, where "a continuum of supports and services be available and administered flexibly in a manner that: …. meets the specific needs of households experiencing homelessness;" Sec. 2, (4)(B). The timeline for reviewing extension requests should be five (5) business days, to ensure these extension requests are decided timely.

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Part 1, Rule 5.00 Prioritization and Assessments and Part 3, Section 2.00: Individualized Needs Assessment

The Department's assessment rules and procedures violate legislative intent by requiring repeated assessments, creating bureaucratic barriers to services. Section 2204(1) of Act 143 directs that applicants participate in a "**brief**, standardized initial prevention and diversion assessment" (emphasis added) for all households upon request of assistance. Section 2216(5) directs the Department to adopt a rule for the "creation of a **brief**, standardized initial assessment form that may be completed by hand, electronically, or by telephone" (emphasis added). Section 2203 (c) states that the Office of Economic Opportunity or community partners "shall" offer to place the household at the appropriate level of care, upon assessment of the household's needs.

Act 143 repeats the word "brief" in two different sections, indicating that these assessments should not be used to delay receipt of services for eligible applicants. Instead of a brief assessment process, the Department has created three different required assessments, as reflected in their VHRC Level 4 housing guide. First, the eligibility assessment at application. Second, a health checklist. Third, applicants are referred to an "assessment specialist" for the complex HOU-SING assessment, which will be scored and used to prioritize eligible households under certain risk categories when capacity is limited. And then applicant must also agree to a coordinated entry assessment, per Section 2210(a)(2) of the Act. Instead of a brief, standardized process, the applicant is now subjected to three assessments before they can access Program services, and an additional coordinated entry assessment when they finally do access services.

Act 143 directed the Department to create a process for a brief, standardized assessment, not three different assessments with multiple agency staff before services are provided. This delay and bureaucracy are not within the intent of the Act. The Act explicitly states that one legislative purpose is "to ensure that emergency housing assistance is available in a manner that encourages efficient and accountable use of taxpayer funds." Sec. 3, (2). The use of taxpayer funds isn't just referencing the cost of the motel room—it's also the cost to the taxpayer for

program administration. Multiple and potentially duplicative assessments requiring hours of additional DCF workers and community partners time is not an efficient use of taxpayer funds. Furthermore, this assessment process does not even comply with the assessment rule itself. Rule 2.03 requires that "The Department or community partner…shall conduct the assessment in a manner designed to minimize delay in delivering services." The assessment rules violate the intent of the Act. LCAR should object to these rules as against legislative intent.

Conclusion

Section 8 of the Act directs the Department to use these emergency rules until permanent rules are implemented on or before October 1, 2027. 3 V.S.A.§ 844 does not contain a provision for emergency rules lasting for more than 180 days. We urge the Committee to object to these rules as contrary to the legislative intent of Act 143, require that the Department correct and revise the emergency rules in accordance with the legislative purpose and intent of Act 143, and submit a new draft to this committee within 30 days for additional review. Per Section 8, (b)(1)(B), the House Committee on Human Services and the Senate Committee on Health and Welfare will be reviewing the rules on or before April 1, 2027. We urge this Committee to do the same. Thank you for consideration of these comments.