FINAL PROPOSED RULE # 26-P012

Final Proposed Filing - Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the "Rule on Rulemaking" adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms shall be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

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

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

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

Rule on Agency Designation

/s/ Dawn O'Toole , on 07/24/2026

(signature) (date)

Printed Name and Title:
Dawn O'Toole, Chief Operations Officer
Agency of Human Services

RECEIVED BY: _____

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

1. TITLE OF RULE FILING:
Rule on Agency Designation

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE
26P012

3. ADOPTING AGENCY:
Agency of Human Services

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

Name: Ashley Johns

Agency: Agency of Human Services

Mailing Address: 280 State Drive- Center Building
Waterbury, VT, 05676

Telephone: 1-802-585-9884 Fax:

E-Mail: ashley.johns@vermont.gov

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

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

Name: Kristin Kellett

Agency: Agency of Human Services

Mailing Address: 280 State Drive- Center Building
Waterbury, VT, 05676

Telephone: 1-802-760-8166 Fax:

E-Mail: kristin.kellett@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:
(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE, EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

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

This rule is adopted pursuant to 3 V.S.A.§ 801(b)(11); 18 V.S.A. §§ 8907, 8911(b), 8913, 8726(b), 8730, and 8731(c).

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:
   The statutes (cited above) authorize AHS as the adopting authority for administrative procedures and afford rule making authority for the administration of rules pertaining to agencies within AHS, which include both the Department of Disabilities, Aging, and Independent Living (DAIL) and the Department of Mental Health (DMH).
9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.
10. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.
11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.
12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.
13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.
14. CONCISE SUMMARY (**150 WORDS OR LESS**):
    This rule sets the requirements for the Agency of Human Services (AHS) to designate nonprofit agencies ("Designated Agencies") to deliver community mental health and intellectual/developmental disability services in specific geographic areas of Vermont. It also outlines the responsibilities of "Specialized Service Agencies," which AHS assigns to provide either community mental health or intellectual/developmental disability services statewide. This rule updates rule 24-020 by incorporating provisions from the Provider Agreement (contract and grant requirements between the Agency and the State) applicable to Designated and

Specialized Service Agencies which specifies administrative and operational responsibilities.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

This rule is necessary to define the requirements for Designated Agencies to provide community mental health and developmental disabilities services. The revisions align the rule with current agreements, clarify expectations, and consolidate broad requirements into a single regulation, rather than spreading them across multiple documents. The overarching goal was to move langauge more appropriate to rule into this Administrative Rule and remove it from contracts, which are reviewed annually (reducing administrative burden on both the State and the Agencies).

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

The rule is required to implement state and federal Medicaid requirements. Additionally, the rule is within the authority of the Secretary, is within the expertise of AHS, and is based on relevant factors including consideration of how the rule affects the people and entities listed below.

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

Designated Agencies (DA)

Specialized Service Agencies (SSA)

Persons with a mental health condition and/or developmental disability

Services providers for persons with a mental health condition and/or developmental disability

Board members of a DA or SSA

Vermont Care Partners

Agency of Human Services

Department of Disabilities, Aging, and Independent Living

Department of Mental of Health

Department of Health

Health law, police, and related advocacy and community-based organizations and groups, including Office of the Healthcare Advocate

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

The rule does not increase or lessen an economic burden on any person or entity, including no impact on the State's gross annualized budget in fiscal year 2027. The changes and amendments conform to the current practices defined in the Provider Agreements that were previously implemented.

19. A HEARING WAS HELD.

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

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

Date: 6/12/2026

Time: 01:00 PM

Street Address: 280 State Street, Waterbury, VT

Zip Code: 05676

URL for Virtual:
http://teams.microsoft.com/meet/211390780721 89?p=d1e6lxMdFSRd5C6kqA

Meeting ID: 211 390 780 721 89

Password: TS6mJ6pA

Dial in by Phone: +1 802-828-7667,307457269#

Phone conference ID: 307 457 269#

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

Date:

Time: AM

Street Address:

Zip Code:
URL for Virtual:

Date:
Time: AM
Street Address:
Zip Code:
URL for Virtual:

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):
    6/19/2026

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

Designated Agencies
Specialized Service Agencies
Developmental Disabilities Services
Community Mental Health Services
Designation

280 State Drive – Center Building
Waterbury, VT 05671-1000

OFFICE OF THE SECRETARY
TEL: (802) 241-0440
FAX: (802) 241-0450

JENNEY SAMUELSON
SECRETARY

TODD W. DALOZ
DEPUTY SECRETARY

STATE OF VERMONT
AGENCY OF HUMAN SERVICES

MEMORANDUM

TO: Sarah Copeland Hanzas, Secretary of State

FROM: Jenney Samuelson, Secretary, Agency of Human Services

DATE: June 29, 2026

SUBJECT: Signatory Authority for Purposes of Authorizing Administrative Rules

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I hereby designate Dawn O'Toole, Chief Operating Officer, Agency of Human Services as signatory to fulfill the duties of the Secretary of the Agency of Human Services as the adopting authority for administrative rules as required by Vermont's Administrative Procedures Act, 3. V.S.A § 801 et seq.

CC: Dawn O'Toole via Dawn.OToole@vermont.gov

Adopting Page

Instructions:

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

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

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

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1. TITLE OF RULE FILING:
   Rule on Agency Designation
2. ADOPTING AGENCY:
   Agency of Human Services
3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

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

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

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

   Rule Log #25-012, Administrative Rules on Agency Designation, 04/15/2025

Proposed Rule: Agency of Human Services (AHS) – Rule on Agency Designation

Presented By: Ashley Johns

Motion made to accept the rule by Diane Sherman, seconded by Jennifer Mojo, and passed unanimously, except for Heidi Moreau, who abstained, with the following recommendations:

1) **Cover Sheet**
    a. #8 and #9: Add more detail at the end

2) **Economic Impact**
    a. General agreements vs. provider agreements – align throughout the document

3) **Public Input Maximization Plan**
    a. #3: Make it clear that you will share when the public comment period is open, they will have a copy of the current proposal

4) **Scientific Information Form and the Incorporation by Reference** –remove

5) **Rule Itself**:
    a. Align wording, make consistent: Designated Agencies v.DA
    b. Page 46: Sounds informal, provide more documentation
    c. Page 46: Recommend a dollar value should be attributed to a position

Economic Impact Analysis

Instructions:

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

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

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

1. TITLE OF RULE FILING:

   Rule on Agency Designation

2. ADOPTING AGENCY:

   Agency of Human Services

3. CATEGORY OF AFFECTED PARTIES:

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

   The affected parties are the Agency of Human Services and the Designated Agencies. There are no additional costs associated with this rule because the amendments reflect existing practice established in the Provider Agreements. Moving the provisions from the Provider Agreeements to Rule will save administratrive time and

costs because there is less to maintain in the Provider Agreements, which are currently reviewed annually.

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

   No impact

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

   Not applicable

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

   No impact

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

   Not applicable

8. COMPARISON:
COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:
   There is no economic impact for there to be a comparison.

9. SUFFICIENCY: *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*
   There are no additional costs associated with this rule because the amendments reflect existing practice and policies. There are no alternatives to adopting the rule; it is necessary to ensure continued alignment with federal and state guidance and law for operating community mental health and developmental disabilities services programs.

Environmental Impact Analysis

Instructions:

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

Examples of Environmental Impacts include but are not limited to:

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

1. TITLE OF RULE FILING:

   Rule on Agency Designation

2. ADOPTING AGENCY:

   Agency of Human Services

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

   No impact

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

   No impact

5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

   No impact

6. RECREATION: *EXPLAIN HOW THE RULE IMPACTS RECREATION IN THE STATE:*

   No impact

7. CLIMATE: *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*
   No impact
8. OTHER: *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*
   No impact
9. SUFFICIENCY: *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*
   This rule has no impact on the environment.

Public Input Maximization Plan

Instructions:

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

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

1. TITLE OF RULE FILING:

   Rule on Agency Designation

2. ADOPTING AGENCY:

   Agency of Human Services

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

   The Agency will hold a public hearing and consider public comments that are received.

   In addition to the public comment period, AHS shared the proposed rule with Vermont Care Partners. AHS advised VCP when the public comment period was open. Comments from VCP will be received and questions will be answered.

   AHS also published the rule and public hearing information on its website.

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

   Agency of Human Services

   Vermont Care Partners

Rule on Agency Designation

Contents

1.0 Authority

1.1 This rule is adopted pursuant to 18 V.S.A. §§ 8907, 8911(b), 8913, 8726(b), 8730, and 8731(c).

2.0 Purpose

2.1 This rule establishes the requirements for the designation of nonprofit agencies ("Designated Agencies") by the Agency of Human Services (AHS) to provide community mental health and intellectual/developmental disability services within distinct geographic areas of Vermont. Additionally, this rule establishes the responsibilities of "Specialized Service Agencies" as assigned by AHS to provide either community mental health or intellectual/developmental disability services within the State.

2.2 AHS will review this rule annually and update its content, as deemed necessary by AHS, to promote alignment with nationally recognized best practices, state initiatives advancing quality and equity in care delivery, and all applicable state and federal laws.

3.0 Definitions

3.1 "Adverse benefit determination" means any of the following:

3.1.1 Denial or limited authorization of a requested service, including determinations based on the type or level of service, requirements of medical necessity, appropriateness, setting, or effectiveness of a covered service,

3.1.2 Reduction, suspension, or termination of a previously authorized service,

3.1.3 Denial, in whole or in part, of payment for a service,

3.1.4 Failure to provide services in a timely manner, as defined by the Agency of Human Services,

3.1.5 Failure to act within timeframes regarding standard resolution of grievances and appeals,

3.1.6 Denial of a beneficiary's request to obtain services outside the network,

3.1.7 Denial of a beneficiary's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other beneficiary liabilities."

3.2 "Agency" means a Designated Agency (DA) or a Specialized Service Agency (SSA).

3.3 "Board" means the Board of Directors (or equivalent) of an Agency.

3.4 "Catchment Area or Service Area" means a Designated Agency's geographic service area, as determined by the Commissioner of DMH and/or the Commissioner of DAIL.

3.5 "Certification" means the process by which DAIL's Developmental Disabilities Services Division (DDSD) determines whether a provider meets minimum standards to provide publicly funded supports or services to people with intellectual/ developmental disabilities and/or their families. Certification and designation are interchangeable terms for the purposes of DDSD.

3.6 "Commissioner" means either the Commissioner of Mental Health (DMH) or the Commissioner of Disabilities, Aging, and Independent Living (DAIL), as indicated. "Commissioners" refers to both collectively.

3.7 "Complaint" means the same as "Grievance" below, with the exception that it can be resolved in one interaction with the initial staff receiving the issue.

3.8 "Day" means calendar day, not business day, unless otherwise specified.

3.9 "Department" means the Department of Disabilities, Aging and Independent Living (DAIL), or the Department of Mental Health (DMH), as indicated. "Departments" means both DAIL and DMH collectively.

3.10 "Developmental Disability" (DD) means an intellectual disability or an autism spectrum disorder which occurred before age 18 and which results in significant deficits in adaptive behavior that manifested before age 18.

3.10.1 Temporary deficits in cognitive functioning or adaptive behavior as the result of severe emotion disturbance before age 18 are not a developmental disability.

3.10.2 The onset after age 18 of impaired intellectual or adaptive function due to drugs, accident disease, emotional disturbance or other causes is not a developmental disability.

3.11 "Disclosed individual" means an individual who openly discloses their disability to the Agency.

3.12 "Disability" means, with respect to an individual:

3.12.1 A physical or mental impairment, including alcoholism and substance abuse, as defined by the Americans with Disabilities Act, that substantially limits one or more of the major life activities of the individual; or

3.12.2 A record of such an impairment; or

3.12.3 Being regarded as having such an impairment.

3.13 "Family member" means an individual who is related to a person with a disability by blood, marriage, civil union, or adoption, or considers themself to be family based upon bonds of affection, and who currently shares a household with the individual with a disability or has, in the past, shared a household with that individual. For the purposes of this definition the phase, "bonds of affection" means enduring ties that do not depend on the existence of an economic relationship. See the section on Individual Rights for limitations on family member participation.

3.14 "Grievance" means an expression of dissatisfaction about any matter that is not an adverse benefit determination, including an individual's right to dispute an extension of time proposed by the Medicaid Program and the denial of a request for an expedited appeal. Possible subjects for grievances include, but are not limited to, the quality of care or services provided, aspects of interpersonal relationships such as rudeness of a provider or employee, or failure to respect the member's rights.

3.15 "Individual" or "Individual with Lived Experience" means a person who is, or was, eligible to receive services from an Agency because of their disability.

3.16 "Individual Appeal" means an internal review by the Medicaid Program of an adverse benefit determination."

3.17 "Intellectual Disability" defined.

3.17.1 Intellectual disability means significantly sub-average cognitive functioning that is at least two standard deviations below the normative comparison group. On most tests, this is documented by a full-scale score of 70 or below, or up to 75 or below when taking into account the standard error of measurement, on an appropriate norm-reference standardized test of intelligence and resulting in significant deficits in adaptive behavior manifested before age 18.

3.17.2 Intellectual disability includes severe cognitive deficits which result from brain injury or disease if the injury or disease resulted in deficits in adaptive functioning before age 18.

3.18 "Local Community Services Plan," means the plan required by 18 V.S.A. § 8908 which describes the methods by which an Agency will provide those services." This was previously referred to as a Local System of Care Plan.

3.19 "Medicaid Program" means:

3.19.1 The Department of Vermont Health Access (DVHA) in its managed care function of administering services, including service authorization decisions, under the Global Commitment to Health Waiver ("the Waiver");

3.19.2 A Department within the Vermont Agency of Human Services (AHS) with which DVHA enters into an agreement delegating its managed care functions including providing and administering services such as service authorization decisions, under the Waiver;

3.19.3 A Designated Agency or a Specialized Service Agency to the extent that it carries out managed care functions under the Waiver, including providing and administering services such as service authorization decisions, based upon an agreement with Department within AHS; and

3.19.4 Any subcontractor performing service authorization decisions on behalf of a Department within AHS.

3.20 "Provider Agreement" means the service contract signed by the Agency and either the Department of Disabilities, Aging and Independent Living, ~~or~~ the Department of Mental Health, or the Vermont Department of Health.

3.21 "Related party" means all affiliates of an Agency, including the affiliate's management and their immediate family members/significant others; the affiliate's principal owner(s) and families/significant others; investments accounted for by the equity method; beneficial employee trusts managed by management of the Agency and any party that may, or does, conduct business with the Agency and has ownership, control, or significant influence over the management or operating policies of another party to the extent that an arm's length transaction may not be achieved.

3.22 "Related-party transaction" means a transaction in which one party to the transaction has the ability to impose contract terms that would not have occurred if one of the parties was not a related party.

3.23 "Self/family-managed" means the Individual or their family plans, establishes, coordinates, maintains, and monitors all developmental disabilities services and manages the Individual's budget within federal and state guidelines.

3.24 "Share-managed" means that the Individual or their family manages some but not all Medicaid-funded developmental disabilities services, and an agency manages the remaining services.

3.25 "Specialized Service Agency" or "SSA" means an agency contracted by the Department(s) to provide specialized services or offer a greater choice in services which are needed by individuals with a serious mental illness, or children and adolescents with a severe emotional disturbance, and/or for persons with developmental disabilities.

3.26 "System of care plan" and "State system of care plan" means the plan require by 18 V.S.A. §8725 describing the nature, extent, allocation, and timing of services that will be provided to people with developmental disabilities and their families.

4.0 Designated and Specialized Service Agencies

4.1 General Requirements

4.1.1 A Designated Agency (DA) and Specialized Service Agency (SSA) shall comply with all applicable State and federal regulations, contracts, grant agreements, or other legally enforceable documents

4.1.2 An Agency contracted through DAIL shall comply with the State System of Care Plan for Developmental Disabilities Services.

4.1.3 An Agency contracted through DMH shall comply with the DMH Mental Health Provider Manual.

4.1.4 Agency designations shall be determined based on the specific population(s) served by the Department(s):

4.1.4.1 Individuals with intellectual/developmental disabilities; and

4.1.4.2 Adults with mental illness, or with significant mental health needs; and children and adolescents with, or at risk of, severe emotional disturbance, or with significant mental health needs, and their families

4.1.5 An Agency may have multiple designations.

4.1.6 Agency designations are for a period not to exceed four years, unless extended by the Commissioner.

4.1.7 Agencies may provide services directly and/or may enter into agreements with individuals or organizations for the provision of services.

4.1.8 Agencies designated in the area of Developmental Disabilities may only provide services directly if they have been certified by DDS to deliver these services, as required by the 18.V.S.A., Chapter 204A.

4.1.9 Designated Agencies shall request and obtain approval from the appropriate Department(s) prior to any merger or contract that impacts service delivery with another Agency or organization when that merger or contract impacts service delivery.

4.2 Agency Designation Process

4.2.1 Initial Designation

4.2.1.1 A Designated Agency shall be incorporated to do business in the State of Vermont as a nonprofit organization and shall have received or applied for federal recognition as a tax-exempt charitable organization as defined in Section 501(c)(3) of the Internal Revenue Code of the United States.

4.2.1.2 An organization may apply for initial designation as a Designated Agency if:

4.2.1.2.1 The Designated Agency for the ~~catchment~~ service area is notified by the Commissioner of intent to de- designate; or

4.2.1.2.2 The Designated Agency for the ~~catchment~~ service area will not apply for re-designation.

4.2.1.3 An organization may apply for initial designation as a Specialized Service Agency if:

4.2.1.3.1 The organization offers a distinctive approach to service delivery and coordination

4.2.1.3.2 Services meet distinctive individual needs

4.2.1.4 An Agency shall apply for initial designation using the application provided by the Department(s).

4.2.1.5 Designated Agencies may apply for new designation for an additional population, provided they meet the requirements and there is not an existing Designated Agency ~~DA~~ in the geographic area for that population or the existing Designated Agency is not applying for re- designation.

4.2.1.6 Each Designated Agency shall be evaluated for re-designation every four years.

4.2.1.7 The State Program Standing Committee (Section 6.0) for the relevant service system shall evaluate each application for initial or re-designation, and any relevant supplemental information.

4.2.1.8 The State Program Standing Committee shall submit a written recommendation to the Commissioner regarding initial or re-designation, and supporting documentation for this recommendation.

4.2.1.9 An Agency not chosen for initial designation shall have the right to appeal the decision pursuant to 18 VSA 8911(b).

4.2.2 Re-designation

4.2.2.1 An Agency seeking a renewal of designation shall continue to meet the requirements established for initial designation, as well as the following requirements:

4.2.2.2 Agencies desiring re-designation shall submit a letter of intent to apply for re-designation to the Commissioner no more than thirty (30) days after the Agency's receipt of the Commissioner's written notice letter.

4.2.2.3 A formal application for re-designation shall be submitted by the Agency no more than sixty (60) days after the Agency's receipt of the Commissioner's written notice.

4.2.2.4 Departments shall review relevant information in determining whether re-designation is appropriate, including, but not limited to: Continuous Quality Improvement Plans; Local Community Services Plans; and Agency performance data.

4.2.3 If an agency has received accreditation from one or more state or national bodies, the Department(s) may substitute relevant accreditation review findings for related designation requirements.

4.2.4 The Commissioner(s) shall elicit public comment for a period no less than two weeks and/or hold a public hearing to obtain input from interested public, and will seek input from the appropriate State Program Standing Committee(s).

4.3 Service Delivery Policies

4.3.1 Agencies shall comply with the requirements included in any contracts or agreements with the Vermont Agency of Human Services or of its departments.

4.3.2 An Agency shall not preclude anyone from receiving the services of the Agency due to inability to pay per 18 V.S.A. § 8910(c).

4.3.3 A Designated Agency shall ensure timely provision of services for the individual, as defined in regulation, State System of Care Plan for Developmental Services, and in the DMH Mental Health Provider Manual for Mental Health Services.

4.3.3.1 A Designated Agency shall not discriminate in the administration of programs, services, or activities or exclude any individual from participation in programs, services, or activities based on race, religion, color, national origin, genetic information, marital/familial

status, sex, sexual orientation, gender identity, age, pregnancy status, place of birth, crime victim status, military, veteran status, disability, or any other protected status.

4.3.3.2 The inability of a Designated Agency to meet the needs of an individual shall not be a factor in any decision by the Designated Agency to refuse to serve the individual.

The Designated Agency will not refuse services based on an individual's lack of stable housing.

4.3.4 The Department acknowledges that the Agency may be required to serve clients with extraordinary needs for treatment, safety, or services.

4.3.4.1 Upon Agency request, the Department Commissioner (or designee) and the Agency shall meet within five (5) business days to discuss feasibility, risk, and funding, including whether services should be provided by another designated agency, a specialized service agency, or another contractor.

4.3.4.2 The parties shall reduce in writing an individualized plan of care necessary to support the client.

4.3.4.3 If the parties fail to meet within five (5) business days, either party may notify the AHS Secretary (or designee), who shall respond within five (5) business days.

4.3.4.4 If, within ten (10) business days of the initial request, the meeting has not occurred, has not been scheduled by Agreement, or in the reasonable faith efforts do not result in resolution, either party may request that the dispute be submitted to an independent mediator, who shall be chosen by agreement of the parties and shall cooperate in good faith to participate in and complete the mediation within sixty (60) days of the request for mediation. The parties will agree to the terms and conditions of the mediation in consultation with the mediator. The parties may extend the mediation beyond sixty (60) days by written agreement. Either party may be represented or assisted in the mediation by legal counsel at such party's own expense.

4.3.5 If ~~DA~~ Agency revenues arising out of their Provider Agreement decrease or if the costs of operations necessary to the performance of their Provider Agreement increase due to circumstances beyond the

~~DA'~~Agency's reasonable control, then ~~DA~~ Agencyshall have the right to request from the Department a planned reduction of expenditures or services that ~~it is~~are required to be provided. ~~under the Agreement~~.

4.3.5.1 Any proposed reduction of services will be considered only as is consistent with the ~~DA~~Agency's independent obligations as a Medicaid provider.

4.3.5.2 Prior to implementing any reduction in services or expenditures, the ~~DA~~Agency shall request to meet and consult with the Department Commissioner or designee.

4.3.6 ~~The Department acknowledges that the s~~Services to be provided by the ~~DA~~Agency ~~the Agreement~~ may be subject to interruption, delay, or suspension as a result of circumstances or acts beyond the control of the ~~DA~~Agency, which may potentially include public health emergency or work force shortage that renders the full performances of such services illegal or impossible.

4.3.6.1 In the event of such circumstances, ~~DA~~Agency must demonstrate to Department that payments are needed to enable the ~~DA~~Agency to continue to compensate and retain employees and maintain other resources for the immediate response to the emergency, and to provide services to clients as soon as possible.

4.3.6.2 If Department determines that payments are needed based upon the ~~DA~~Agency's demonstration, Department will continue payments to the ~~DA,~~Agency subject to conditions and limitations that may be imposed by Department, and to the extent allowable.

4.3.6.3 ~~DA~~Agency will provide notice to Department as to any ongoing adjustments or reductions to the services provided.

4.3.7 The ~~DA~~Agency will develop, plan, implement, and arrange for the services set forth in the Agreement in accordance with established funding and administrative policies and regulations of the State of Vermont and of the federal government, including those administrative requirements set by the Centers for Medicare and Medicaid Services applicable to Medicaid and Medicaid services.

4.3.7.1 If the State of Vermont's funding and administrative policies and regulations are modified ~~during the term of an Agreement~~, ~~DA~~Agency shall receive written notice from the State and have a reasonable period of time to implement any required changes, not to exceed 90 calendar days, unless a shorter period is

required by law or a longer period of time is agreed to by the parties.

~~4.3.3.2~~4.3.7.2 If the State of Vermont's funding and administrative polices and regulations change in any material respect within 90 calendar days of the execution of an Agreement with the State, ~~DA~~Agency shall have a reasonable period of time following execution of the Agreement, not to exceed 90 calendar days, unless otherwise agreed, to implement any required changes

~~4.3.4~~4.3.8 The Designated Agency shall ensure, within its service~~catchment~~t area:

~~4.3.4.1~~4.3.8.1 That a comprehensive, integrated, accessible and responsive array of services, staff, and supports is available to meet the service needs of eligible persons consistent with the established service and budget priorities and allocations;

~~4.3.4.2~~4.3.8.2 The provision of all comprehensive services, as detailed in the State System of Care Plan for Developmental Services; and in the DMH Mental Health Provider Manual for Mental Health Services.

~~4.3.4.3~~4.3.8.3 The provision of crisis response services for the designated populations;

~~4.3.4.4~~4.3.8.4 Providing, and/or contracting for the provision of, secure and safe services for people who are in the custody of the Commissioner

~~4.3.4.5~~4.3.8.5 The provision in a timely manner of services needed to assist the Commissioner in any relevant legal proceedings, including transmission of records and witness statements;

~~4.3.4.6~~4.3.8.6 The provision of timely return to the community from inpatient or institutional placements;

~~4.3.4.7~~4.3.8.7 The provision of timely processing of: individual applications for service, information and referral to community and government resources, education about choices for service, and support options, including self/family-managed services where applicable;

~~4.3.4.8~~4.3.8.8 Effective collaboration with related community/human

service agencies providing support services in the region, including but not limited to: physical or dental health services, social services, housing and nutrition, substance use disorder services, education services, employment services, relevant state departments/agencies, local emergency departments, law enforcement, Designated and Specialized Service Agencies, veteran and active military services, peer service organizations, therapeutic foster care services, including collaboration between Mental Health and Developmental Disabilities within the Agency, and higher levels of care.

~~4.3.5~~4.3.9 The Agency shall facilitate all necessary referrals to external providers.

~~4.3.6~~4.3.10 The Agency shall respond to referrals they receive in a timely manner.

~~4.3.7~~4.3.11 The Agency shall continue care coordination for individuals who are referred to a higher level of care, including participation with discharge planning for their expected timely return to the client's community of choice. Documentation for such care shall be maintained for the duration of the Agency's provider agreement, and if, applicable, designation status.

~~4.3.8~~4.3.12 The Agency shall ensure that contracts are in place with all service providers with whom the Agency contracts for services using DMH/DAIL funds. The contracts shall detail the roles and responsibilities between the two entities regarding individual services and administrative functions (including information sharing and reporting, fiscal monitoring of individual services, and service plan implementation).

4.3.13 The Agency shall provide necessary information and guidance to the individual or family member regarding their responsibilities for shared management. Individuals and families shall be provided information regarding the option to self/family-manage services.

4.3.14 The Agency shall serve as the state-designated placement agency for all shared living placements, including foster home placements for children and adults, in accordance with State law.

4.3.14.1 The ~~Designated~~ Agency shall work with the State to determine rates for difficulty-of-care payments as compensation for providing additional care necessitated by a physical, mental, or emotional disability for which the State has determined additional compensation is required, except for foster homes designed at the Department of Children and Families.

4.4 Early Periodic Screening, Diagnosis and Treatment

4.4.1 The Agency will provide developmental services pursuant to the Early and Periodic Screening, Diagnostic and Treatment based on medical necessity for children under age 21 enrolled in Medicaid in their service~~catchment~~ area.

4.4.2 The Agency will ensure intake, evaluation, determination of medical necessity, and provision of services in their ~~catchment~~ service area. This includes providing Children's Personal Care Services assessments for children within the ~~catchment~~ service area.~~-~~

4.5 Agency Organization and Administration

4.5.1 The Agency shall have administrative structures which encourage open communication among all entities (internal and external) and which support the development of mechanisms to identify and respond to organizational needs and concerns. This includes, but is not limited to, processes that support:

4.5.1.1 Consistent values, mission, vision and goals displayed by all Agency staff and policies.

4.5.1.2 Communication and collaboration among managers, staff and administration related to programmatic planning for both short-term and long-term effectiveness. This includes the sharing of organizational outcomes and performance improvement plans.

4.5.1.3 Timely and shared decision-making by program managers, supervisors and/or administration.

4.5.1.4 Positive staff morale and regular review of staff satisfaction and feedback.

4.5.1.5 Communication and collaboration with individuals, families, other providers and community partner organizations.

4.5.1.6 Positive community presence and support of key community partner organizations.

4.5.1.7 The Agency shall have an organizational chart showing all reporting and supervisory relationships by position titles.

4.6 Culturally and Linguistically Appropriate Services (CLAS)

Designated and Specialized Service Agencies shall align with the National Standards for Culturally and Linguistically Appropriate Services (CLAS)[1] in Health and Health Care. Agencies will provide effective, equitable understandable, and quality services that are responsive to the diverse cultural heath beliefs and practices, preferred languages, health literacy, and other communication needs of individuals served.

This will include, at a minimum:

4.6.1 Promoting CLAS through policy and practice
4.6.2 Recruitment and support of culturally and linguistically diverse staff and leadership
4.6.3 Training on CLAS for staff, leadership, and the Board
4.6.4 Language access services, as described in the Accessibility section of this Rule (4.15)
4.6.5 Ongoing assessment of the organization's CLAS-related needs and integration into Continuous Improvement goals
4.6.6 Collect and maintain accurate and reliable demographic data to monitor and evaluate the impact of CLAS on health equity and outcomes to inform service delivery
4.6.7 Ensure information related to the grievance and appeal process is accessible to the individual
4.6.8 Ensuring culturally and linguistically appropriate intake and assessment of eligibility for services.

4.7 Board of Directors (or equivalent)

4.7.1 Board Duties

The Board of a Designated Agency shall:

4.7.1.1 Meet the requirements established by 18 V.S.A. § 8909:

4.7.1.1.1 Must be representative of the demographic makeup of the area served.

4.7.1.1.2 At least 51% of the Board must be individuals with lived experience or family members of individuals with lived experience.

4.7.1.1.3 The Board will survey members annually to ensure the requirement is met.

4.7.1.2 Be responsible to the Department(s) for the application and implementation of Agency established policies related to DMH/DAIL funding.

4.7.1.2.1 The Board shall appoint an executive director (or equivalent) who shall be responsible to the Board for all Agency activities and for the application and implementation of Agency established policies.

4.7.1.3 Aligning with 3 V.S.A. § 1222, Board members will be aware of potential conflicts of interest, and disclose the

conflict, recuse themselves, and/or discuss with the Board as relevant. This is especially in cases of:

4.7.1.3.1 Executive Director (or equivalent) hiring, review, and/or firing

4.7.1.3.2 New board member selection

4.7.1.4 Determine and promote the mission of the Agency.

4.7.1.5 Assess community needs and resources and provide recommendations to Agency for how to address those identified needs.

4.7.1.6 Review Agency coordination with other service systems and agencies within the geographic area.

4.7.1.7 Review, and provide recommendations for, the Continuous Quality Improvement Plan for each DMH/DAIL population served by the Agency.

4.7.1.8 Review the service capacity in the geographical area to meet the needs of eligible service recipients, within the guidelines established by, and the resources available from, DMH/DAIL.

4.7.1.9 Oversee that policies and services are consistent with the mission and outcomes of the State of Vermont, the Agency of Human Services, DMH/DAIL, and the needs of individuals and families receiving services.

4.7.1.10 Recommend or approve new Agency policy and significant policy updates.

4.7.1.11 Review and approve the Agency budget and monitor Agency financial status and staff compensation rates.

4.7.1.12 Oversee service quality, including the review of aggregate individual satisfaction information, and aggregate information on grievances and individual service appeals.

4.7.1.13 Ensure that the Agency maintains a technological infrastructure to conduct business effectively with external entities, including DMH/DAIL and other state and local service agencies and systems.

4.7.1.14 Maintain confidentiality regarding the information it receives during its deliberations on Agency staff and individuals.

4.7.1.15 Ensure that Agency staff training is conducted in an

effective and timely manner.

4.7.2 Board By-Laws

4.7.2.1 The board shall adopt bylaws that include, but are not limited to:

4.7.2.1.1 Clearly written responsibilities and authorities of the Executive Director (or equivalent).

4.7.2.1.2 The powers and duties of the Board, its standing and special committees, and the responsibilities of individuals serving as board members, including attendance requirements.

4.7.2.1.3 That Board meetings be open to the public, except when the Board determines the need to convene in Executive Session.

4.7.2.1.4 A statement of its policies and procedures for disposal of assets and debts and obligations in the event of dissolution of the Agency, including the return to DMH/DAIL of any assets and property directly obtained with DMH/DAIL funds, as allowed by law. When a Designated Agency merges with another organization, the Agency shall obtain written authorization from DMH/DAIL approving the transfer or requiring return of the assets and property purchased directly with DMH/DAIL funds.

4.7.2.1.5 At a minimum, Board By-Laws must include:

4.7.2.1.5.1 The requirement to have representation from individuals with the appropriate financial and legal expertise.

4.7.2.1.5.2 The requirement that no employee of the Agency~~DA~~ shall serv~~ice~~ on the Board.

4.7.2.1.5.3 The requirement to replace within 120 days any vacancy.

4.7.2.1.5.4 The requirement that each member of the Board of Directors will receive training in corporate governance.

4.7.2.1.5.5 The requirement that at least once a quarter, the members of the Board of Directors will be presented and will review the financial statements, allowing them to:

- Effectively oversee investments and business opportunities not directly related to the provision of services.

- Effectively oversee the amount and types of compensation and benefits extended to executive and senior management.

4.7.2.1.5.6 The requirement that at least annually, the Board will review and approve salary, benefit, and compensation packages for personnel earning $150,000 or more per annum, including any changes to those packages.

4.7.3 Records and Retention

4.7.3.1 Documents presented to the Board of Directors will be kept for at least two years, including minutes of the Board of Director meetings and meetings of committees thereof.

4.7.3.2 Board documents shall be made available to the State upon request.

~~4.7.2.1.4~~4.7.3.3 The Agency will provide copies of the Board approved policies to the Department upon request.

4.8 Local Program Standing Committee

4.8.1 The Agency shall establish a Local Program Standing Committee for each population served by the Agency.

4.8.2 Committee Structure

4.8.2.1 Each Local Program Standing Committee shall be comprised of at least five members, a majority of whom shall be disclosed individuals with direct lived experience and/or family members.

4.8.2.1.1 In Developmental Disabilities Services, at least three members shall be people with direct lived experience receiving services.

4.8.2.1.2 In Mental Health Services:

4.8.2.1.2.1 At least two members shall have direct lived experience receiving adult mental health services; and

4.8.2.1.2.2 At least two members shall have direct lived experience receiving child, youth, and family services, or be family members of an individual with that lived experience.

4.8.2.2 At least one member of each Local Program Standing Committee shall serve as a voting member of the Agency Board of Directors (or equivalent).

~~4.8.2.2~~

4.8.2.3 The Local Program Standing Committee may be comprised totally of agency board members if criterion 4.~~7.2.1~~8.2.1 is met.

4.8.2.4 Committee members shall have the knowledge and Agencies shall provide the training necessary to be active participants in the development of the Local Community Services Plan or Community Needs Assessments.

4.8.2.5 The Agency Board of Directors (or equivalent) shall determine its policy for reimbursing committee members for expenses that, if not reimbursed, would prohibit the member from attending committee meetings.

4.8.3 Duties and Responsibilities

4.8.3.1 Local Program Standing Committee responsibilities shall include:

4.8.3.1.1 Providing recommendations to the Agency's leadership regarding the appointment of a new program director or the person responsible for program services.

4.8.3.1.2 Providing feedback about Agency operations, management, and quality to the program services director at least annually, including the review of:

4.7.3.1.2.1 Aggregate results of staff, individual, and, if available, community partner organization satisfaction surveys;

4.7.3.1.2.2 Agency or program training plan, as described in 4.12, which shall be updated at least every three years and reviewed at least annually for DDS;

4.7.3.1.2.3 Aggregate results from DMH/DAIL quality processes, and any corrective actions planned or completed;

4.7.3.1.2.4 Agency Continuous Quality Improvement plans and corresponding results; and

4.7.3.1.2.5 Aggregate complaint, grievance, and appeal data and agency responses to any themes identified.

4.8.3.1.3 Engaging with the Agency Executive Director (or equivalent) at least annually.

4.8.3.1.4 Assisting with the development of the Agency's Local Community Services Plan or Community Needs Assesment, including establishing priorities for resource allocation, and the schedule for the anticipated provision of new or additional services.

4.9 Continuous Quality Improvement

4.9.1 The Agency shall develop, implement, and maintain an effective, ongoing, Agency-wide data-driven Continuous Quality Improvement (CQI) plan, that is reviewed annually and updated at least every four years. The CQI plan shall:

4.9.1.1 Reflect the complexity of its organization, services, and population served, and involve all Agency services (including those services furnished under contract or arrangement with a third-party);

4.9.1.2 Prioritize indicators related to:

4.9.1.2.1 For mental health populations: Improved mental health outcomes;

4.9.1.2.2 For developmental services populations: Community inclusion; independent living; health and safety; trauma evaluation, prevention and mitigation.

4.9.1.3 Prescribe actions to demonstrate clinical care and operational improvements;

4.9.1.4 Include the perspectives of individuals and families and a mechanism for input by community partner organizations, as appropriate.

4.9.2 The Agency shall maintain documentation of its quality assessment and performance improvement program and provide such documentation to the Department(s) upon request.

4.9.2.1 There shall be at least one measurable outcome for each goal of the CQI plan.

4.9.2.2 There shall be at least one responsible team, program, or staff role identified for each goal.

4.9.3 An Agency shall respond in a timely and effective manner to any Corrective Action Plan (or equivalent) approved by the Department(s).

4.10 Required Event Reporting and Fair Hearing Requirements

4.10.1 Individual Complaints, Grievances, and Individual Service Appeals

4.10.1.1 The Agency shall have policies and procedures to address individual complaints, grievances, and appeals that are consistent with requirements established by the Agency of Human Services, and the Department of Vermont Health Access (DVHA) Managed Care policy.

4.10.1.1.1 All grievances and individual service appeals shall be submitted to the Department of Vermont Health Access Warehouse within 14 calendar days of receipt

4.10.1.2 Complaints, grievances, and individual service appeals shall be reviewed regularly, including in aggregate, to identify and address any trends. At a minimum reviewers will include:

4.10.1.2.1 The Board of Directors (or equivalent), per 4.6.1.12

4.10.1.2.2 Local Program Standing Committees, per 4.7.3.1.2.5

4.10.1.2.3 State Program Standing Committees, per 6.2.1.8

4.10.1.2.4 The Department of Mental Health and Department of Disabilities, Aging and Independent Living

4.10.1.3 If a client of the Agency files an appeal with the Department or requests a fair hearing, the Agency must promptly provide all requested clinical records and other necessary documentation to the Department

4.10.1.4 When a client files a request for a fair hearing, the Department shall notify the Agency and the Agency shall ~~file a notice of appearance and,~~ if requested, attend the hearing and testify.

4.10.1.5 The Agency shall be held solely liable for any final adverse decision of the hearing officer if it is determined by the Department that the adverse decision was the result of a lack of critical information requested by the Department that was not provided by the Agency.

4.10.2 Critical Incident Reports

4.10.2.1 Agencies will follow the requirements set forth by Departments:

4.10.2.1.1 For mental health services, the Critical Incident

Reporting Requirements

4.10.2.1.2 For intellectual/developmental disabilities services, the DAIL Developmental Disability Service Division and Adult Services Division Critical Incident Reporting Guidelines

4.11 Data Policies

4.11.1 The Agency agrees that it is the Department's business associate as defined in 45 CFC 160.103 when performing certain functions including: administering grievances, appeals, data analysis, processing, and administration not associated with treatment and health care operations.

4.11.2 The Agency shall ~~share~~provide data directly to the Vermont Health Information Exchange (VHIE) and shall follow directives of all ~~in accordance with~~ applicable state or federal regulations or~~and~~ agreements.~~, including the Health Information Exchange 42 CFR Part 2 Data Governance Documentation~~.

~~4.11.1~~4.11.3 The Agency shall have a technological infrastructure that enables cost- effective information collection, analysis, and telecommunication functions sufficient to:

~~4.11.1.1~~4.11.3.1 Submit all required data in the format and timeline specified by DMH/DAIL;

~~4.11.1.2~~4.11.3.2 Monitor and report on service costs, accessibility, service provision, case mix, quality assurance and improvement, and outcome activities as required by this rule and the Provider Agreement; and consistent with the DMH Mental Health Provider Manual, the Medicaid Manual for Developmental Disabilities Services and DDSD Encounter Data Submission Guidance for Home and Community-Based Services as appropriate; and

~~4.11.1.3~~4.11.3.3 Support high quality and responsive service provision with the capacity to monitor the services delivered by contracted service providers, and/or persons who share-manage, consistent with this rule, the Provider Agreement, and the DMH Mental Health Provider Manual, the Medicaid Manual for Developmental Disabilities Services, and DDSD Encounter Data Submission Guidance for Home and Community-Based Services, as appropriate.

~~4.11.2~~4.11.4 The Agency will remain compliant with national standards

such as the United States Core Data for Interoperability (USCDI) for data transmission to the State of Vermont. The Agency will support the State of Vermont's efforts in promoting interoperability by maintaining a USCDI baseline and continue to raise the baseline as the standard evolves.

4.12 Local Community Services Plan

4.12.1 Each Designated Agency shall determine the need for community mental health and developmental disability services within the area served by the Agency and shall thereafter prepare a local community services plan which describes the methods by which the Agency will provide those services.

4.12.1.1 Community service plans should include developmental care core services referenced in DAIL's System of Care Plan; the following core mental health services: crisis services, outpatient mental health and substance use services, person- and family- centered treatment planning, community-based mental health care for veterans, targeted care management, psychiatric rehabilitation services, and screening, diagnosis, and risk assessment; and other services identified as necessary for the local community. If a core service is not included in the local community services plan, the Agency shall identify the reason for the omission in their community services plan.

4.11.1.2 The plan shall include a schedule for the anticipated provision of new or additional services and shall specify the resources which are needed by and available to the Agency to implement the plan.

4.11.1.3 The community services plan shall be reviewed annually.

4.12.2 The board shall consult with the following groups to determine the priorities of needs for community mental health and developmental disability services:

4.12.2.1 The Commissioners,

4.12.2.2 Individuals receiving services and their families and/or guardians for each population served,

4.12.2.3 Local Program Standing Committees,

4.12.2.4 Specialized Services Agencies,

4.12.2.5 Other organizations representing persons receiving services, including other governmental or

private agencies that provide community services to the people served by the Agency

4.12.3 The plan shall encourage utilization of existing agencies, professional personnel, and public funds at both State and local levels in order to improve the effectiveness of mental health and developmental disability services and to prevent unnecessary duplication of expenditures.

4.13 Personnel Policies

4.13.1 The Agency shall have written personnel policies and procedures that promote high quality services.

4.13.1.1 The Agency shall employ qualified personnel who are assigned duties and responsibilities that are appropriate to their level of training, education, and experience, and are supervised accordingly.

4.13.1.2 The Agency shall have written policies and procedures for staff evaluation that include regular supervisory review and shall demonstrate that these policies and procedures are followed.

4.13.1.3 The Agency shall have a position description for each employee that clearly delineates the functions for which the employee will be held accountable and to whom they report. The position description shall also describe the education and experience required for the position.

4.13.1.4 The Agency shall have written policies prohibiting discrimination as described in 4.3.3.1.

~~4.13.1.4~~4.13.1.5 The Agency shall maintain a written workplace violence prevention and crisis response policy that meets or exceeds the requirements of 18 V.S.A.§7114.

4.13.2 Staff Training

4.13.2.1 The Agency shall develop a training plan for all staff and sub-contractors. The training plan may have different expectations for different staff roles. The plan shall be updated annually for developmental disability services and at least every three years for mental health services. Training shall address:

4.13.2.1.1 Cultural responsiveness with consideration for groups identified in 4.3.3.1;

4.13.2.1.2 Person-centered and family-centered, recovery-oriented,

evidence-based and trauma-informed care;

4.13.2.1.3 Primary care/co-occurring mental health/substance use integration;

4.13.2.1.4 Non-physical intervention and de-escalation techniques;

4.13.2.1.5 Risk assessment, suicide prevention and suicide response; and

4.13.2.1.6 The roles of families and peers.

4.13.2.1.7 The Continuity of Services Plan – see section 4.17~~6~~

4.13.2.2 The Agency shall provide orientation training to new staff and document this training.

4.13.2.3 The Agency shall include individuals and/or families in the design, delivery, and evaluation of training for staff, as appropriate

4.13.2.4 Agencies shall implement training for staff consistent with the requirements included in Health Care Administrative Rule 7.100 titled "Disability Services-Developmental Disabilities " and/or those listed in the DMH Mental Health Provider Manual, as appropriate.

4.14 Individual Confidentiality Policies

4.14.1 The Agency shall have written policies and procedures that protect the confidentiality of individual information, consistent with applicable state and federal regulations, including but not limited to:

4.14.1.1 Language in staff and contracted service providers' contracts that explicitly states expectations about the confidentiality of service or care plan information.

4.14.1.2 Written policies and procedures for assuring informed consent.

4.14.1.3 Written policies and procedures that safeguard medical records and other individual information and adhere to all applicable confidentiality policies.

4.15 Individual Rights

4.15.1 The Agency shall have a written policy ensuring the rights of all individuals are observed consistent with state and federal law, including 18 V.S.A. § 8728, as well as the State System of Care Plan for DAIL, and the DMH Mental Health Provider Manual, and those identified in this rule.

4.15.2 Additionally, the Agency shall ensure that individuals are afforded the rights listed below.

4.15.3 General Rights

4.15.3.1 The individual has the right to be informed of their rights at intake and/or initial evaluation, as evidenced by the individual (or representative's) signature. Exceptions may be made for no signature when thoroughly documented with a rationale;

4.15.3.2 The right to be treated with dignity and respect by all staff;

4.15.3.3 The right to participate in decision making regarding services, treatment plans, ongoing supports, and practices;

and

4.15.3.4 The right to information that is needed to plan appropriate service and supports.

4.15.4 Privacy Rights

4.15.4.1 Individuals shall have the right to privacy consistent with applicable law, including HIPAA (Pub. L. No. 104-191, 110 Stat. 1936 (1996)), 42 CFR Part 2, and patient privacy requirements specific to the care of minors required by 18 V.S.A. §7103.

4.15.4.2 Individuals have the right to be informed of the limitations of privacy and confidentiality.

4.15.5 Access to Services

4.15.5.1 Individuals have the right to receive information about eligibility criteria, practitioner qualifications, practice guidelines, and available services and programs regardless of whether they are offered by the Agency.

4.15.5.2 Individuals have the right to receive treatment and services in the most integrated, least restrictive setting appropriate to their needs.

4.15.5.3 Individuals have the right to a comprehensive service plan that incorporates coordination with other relevant Agencies/systems if desired.

4.15.6 Personal Liberty and Autonomy

4.15.6.1 Individuals or their guardian have the right to name who their natural supports are, and to name those natural supports they do not want from participating in their supports.

4.15.6.2 Individuals or their guardian have the right to create Advanced Directive(s) and have support to create them, if desired.

4.15.6.3 Individuals or their guardian have the right to refuse or terminate services, providers, and/or medication, except where required by court order.

4.15.6.4 Individuals or their guardian have the right to voice complaints, grieve treatment and services, and/or appeal decisions made by an Agency without negative consequences.

4.15.6.5 Individuals or their guardian have the right to all legal protection and due process for status as an outpatient and inpatient individual, both voluntary and involuntary, as defined under Vermont law.

4.16 Accessibility

4.16.1 The Agency shall conduct its business and ensure service delivery in a way that complies with the Americans with Disabilities Act (ADA) and meets the following requirements:

4.16~~5~~.1.1.1 Accessible parking, entrances, private meeting space and bathrooms shall be available in each building that is open to the public and/or used for the provision of services. This does not apply to private homes or apartments.

~~4.15.1.2~~ 4.16.2 The inclusion of transportation needs to access necessary supports and services must be included in the development of an individual's service plan.

~~4.15.1.3~~ 4.16.3 Information and communication shall be provided to individuals and/or their authorized representatives in a format that is understandable to the individual applying for or accessing services.

~~4.15.1.4~~ 4.16.4Written policies and procedures shall be developed that provide for other accommodations, as needed, and as determined by the needs of the individual.

4.17 Continuity of Services Plan

4.17.1 Each Designated Agency shall have a written plan for continuity of care in the event of the Agency's voluntary or involuntary closure; a disaster; unanticipated service interruptions; relocation of an individual; or transfer of an individual to another provider. The plan shall account for:

4.17.1.1 Orderly and timely transfer of individuals to other service providers, or referral.

4.17.1.2 Notification to individuals, staff, and community partner organizations of any upcoming closure and transition plans for continuity of care.

4.17.1.3 Notification to the Department(s) no fewer than 90 days prior to closure to discuss the rationale for closure and plans for continuity of care.

4.17.1.4 Transfer of individual records to the appropriate service provider.

4.17.1.4.1 The Designated Agency shall provide all ~~the~~ client records necessary to maintain continuity of care to the new provider within ten (10) calendar days of the request or the date of transfer to the new service provider, whichever occurs first.

~~4.17.1.3.1~~4.17.1.4.2

~~4.17.1.4~~4.17.1.5 Ensuring that individual records are secured and maintained in accordance with State and Federal regulations.

~~4.17.1.5~~4.17.1.6 To the extent feasible, identify alternative locations and methods to sustain service delivery and access to medications during emergencies and disasters

~~4.17.1.6~~4.17.1.7 At a minimum, the Designated Agency shall review its Continuity of Care Plan annually and update it if needed.

~~4.17.1.7~~4.17.1.8 The Department(s) may request to review a Designated Agency's Continuity of Care Plan at any time.

4.18 Individual Records

4.18.1 The Agency will document services in compliance with federal and state guidelines and practice standards including the Mental Health Provider Manual and the Vermont Medicaid Manual for Developmental Disabilities Services.

4.18.2 Individual records shall reflect the delivery of clinical care, specifically that it is strengths-based, person-centered and family-centered (for youth, as appropriate), recovery-oriented, evidence-based, and trauma-

informed.

4.18.3 Agencies shall have internal auditing practices in place for a rotating, representative subset of clinical records.

4.18.4 DAIL/DMH shall maintain file review criteria with agencies pertinent to the programs being monitored.

4.18.4.1 In accordance with the 21st Century Cures Act, individuals shall be given access to their health information in the electronic health record without charge, if requested.

4.19 Program Budget and Fiscal Policies

4.19.1 An Agency shall comply with the requirements of 18 V.S.A. § 8910.

4.19.2 The Agency shall have fiscal management practices that demonstrate the following:

4.19.2.1 Fiscal solvency, as demonstrated by the ability to meet payroll and pay bills in a timely fashion;

4.19.2.2 Medicaid certification;

4.19.2.3 A published fee schedule, for DDS services this requirement goes into effect July 1, 2025;

4.19.2.4 The Agency shall make every reasonable effort to collect all fees from individuals and third-party payors;

4.19.2.5 Reliable monitoring of billing and expenditures versus revenues by individual, by staff, by service, by program, and by service provider, in accordance with generally accepted accounting principles (GAAP);

4.19.2.6 Accounting practices in accordance with DMH/DAIL standards and procedures including, at a minimum, the composite balance sheet, and the composite statement and program statements of revenue and expense;

4.19.2.7 An annual financial and compliance audit performed by an independent public accountant in accordance with the department's Audit Guide and all applicable State and Federal laws, regulations, policies and procedures;

4.19.2.8 Adequate fire, personal, professional and general liability, board/officer insurance coverage within guidelines set by DMH/DAIL;

4.19.2.9 Efficient administrative practices, including, but not limited to, fiscal, policy, and procedures;

4.19.2.10 An Agency may receive funds from sources other than the DMH/DAIL to carry out its duties for the population(s) whom they are designated to serve by DMH/DAIL. Funds received from such sources shall be identified to DMH/DAIL; and

4.19.2.11 An Agency shall identify and report all related-party transactions within its organization to the Commissioner, including the nature of the relationship and transaction, and the dollar amounts involved.

4.19.3 Upon request and with seven (7) business days' notice, ~~T~~the Agency shall comply with the following records requirements:

4.19.3.1 Allow physical inspection or review ~~-~~of its books and records, including inspection and review of any and all financial reports and backup~~.~~

4.19.3.2 Allow review of any and all information relating to executive compensation, employment contracts and salary, bonus, and benefits of any sort paid to the executives and officers of the Agency.

4.19.3.3 Provide ~~reasonable~~ anonymized information regarding the wages and benefits for other, non-executive, classes of employees and contractors.

~~4.19.2.11~~4.19.3.4 Provide ~~record~~ access to contracts with, and payments made to, contractors providing services on behalf of the Agency related to any contract or grant issued by the State.

4.20 Information Technology (IT) Policies

4.20.1 The Agency shall have a technological infrastructure that enables cost effective information collection, analysis, and telecommunication functions required to:

4.20.1.1 Protect confidentiality of individuals when data are transferred to the Department(s) and/or other entities in adherence with, as indicated:

4.20.1.1.1 the Health Insurance Portability and Accountability Act (HIPAA);

4.20.1.1.2 the Family Educational Rights and Privacy Act (FERPA)

4.20.1.1.3 42 CFR Part 2

4.20.1.2 Ensure that data is securely kept, in compliance with Agency of Human Services (AHS) policy[2]; and

4.20.1.3 Ensure cybersecurity through alignment with Agency of Digital Services (ADS) security standards. For more information, please visit: https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives

4.20.1.3.1 All staff who access individual records of the Agency's systems for storing and accessing records must receive cybersecurity training at onboarding and annual refresher training thereafter.

4.20.2 The Agency shall adopt a policy regarding the use of artificial intelligence (AI) that must include, at a minimum:

4.20.2.1 Voluntary, informed individual consent, including explicit consent for any recording or ambient listening;

4.20.2.2 Availability of a non-AI opetion without pressure or impact to services provided; and

~~4.20.1.3~~4.20.2.3 Disclosure of the tool's functions, data practices, and any third-party involvement.

5.0 Specialized Service Agencies

5.1 Specialized service agencies may be local, regional, or statewide.

5.2 Responsibilities of the Specialized Service Agency will be determined by the Commissioner during the development of the Provider Agreement and shall include clearly delineated roles and responsibilities between the specialized service Agency and the Designated Agency in the relevant geographic area(s).

[2] Rules, Policies, Procedures & Guidance Documents | Agency of Human Services (vermont.gov)

5.3 Specialized service agencies shall meet the same requirements as a Designated Agency, with the following exceptions:

5.3.1.1 Specialized service agencies shall not be responsible for assuring that a comprehensive and responsive array of services is available within the designated geographical region.

5.3.1.2 Specialized service agencies shall not be responsible for determining the service needs of the community for each

population it serves or developing a plan to address the identified needs. They will be responsible, however, for working collaboratively with the Designated Agency in the development of the Local Community Services Plan.

5.3.1.3 Other requirements may be waived at the discretion of the Commissioner.

6.0 State Program Standing Committees

6.1 Standing Committees. here shall be a State Program Standing Committee (State Committee) for: 1) Adult Mental Health; 2) Child, Adolescent, and Family Mental Health; and 3) Developmental Disabilities services.

6.1.1 The Advisory Board created by 18 V.S.A. § 8733 shall be the State Committee for Developmental Disabilities services. The State Committee shall comply with the requirements of that section.

6.1.2 The State Committee for Mental Health shall comply with the following requirements:

6.1.2.1 The State Committee(s) shall be comprised of between 10 and 15 members.

6.1.2.2 A majority of members shall be disclosed individuals with lived experience and/or family members of the disability group that they represent.

6.1.2.2.1 For the Adult Mental Health State Committee, this shall be current or former adult individuals with lived experience

6.1.2.2.2 For the Child, Adolescent, and Family Mental Health State Committee, this shall be either current or former youth individuals with lived experience, or family members of current or former youth individuals with lived experience

6.1.2.3 All members shall be appointed by the Governor or designee for terms of three years.

6.2 State Committee Duties and Responsibilities

State Committee functions shall include:

6.2.1.1 Assisting in the identification of candidates for the State Committee;

6.2.1.2 State Committee meeting planning and facilitation;

6.2.1.3 Providing recommendations to the Department(s) regarding agency initial and redesignation, which will include:

6.2.1.3.1 reviewing aggregated data and reports provided by the Department, and

6.2.1.3.2 meeting with representatives from the Agency

6.2.1.4 Ranking and recommending priority areas of focus for the statewide system of care, to be updated at least every three years. The committee will focus on these priority areas when planning agendas and engaging in work;

6.2.1.4.1 In addition to the formal recommendation process, the committee will discuss concerns about the system of care as they arise

6.2.1.4.2 As needed, the committee will formalize concerns to share with Commissioner(s) as appropriate

6.2.1.5 Providing to the Department recommendations for candidates for classified leadership positions involved in the Agency Designation process; and

6.2.1.6 Evaluation of Quality: The Committees shall advise the Department on the quality and responsiveness of services offered statewide.

6.2.1.7 Department Policy: The Committees shall review and recommend new policy that pertains to or significantly influences services for the population they represent.

6.2.1.8 Grievances & Individual Service Appeals: The Committees shall review aggregate information on the grievances and individual service appeals at least annually.

7.0 Provisional Designation, De-Designation, and Cancellation of Contract

7.1 Provisional Designation

7.1.1 An Agency may be placed on provisional status at any time, following a

determination by the Commissioner that the Agency has:

7.1.1.1 Failed to comply with this rule or other applicable regulations;

7.1.1.2 Knowingly disregarded or neglected policies and/or practices that could endanger the health or safety of individuals, their family members, employees, or the public;

7.1.1.3 Violated an individuals' human or civil rights;

7.1.1.4 Failed to implement one or more items on a Corrective Action Plan (or equivalent) as accepted by the Department(s).

7.1.1.5 Pattern of failed implementation decisions resulting from grievance and/or individual service appeals processes;

7.1.1.6 Engaged in severe fiscal irresponsibility; or

7.1.1.7 Falsified data/record keeping.

7.1.2 The notification of provisional status from the Commissioner to the Agency shall include:

7.1.2.1 The reasons for such action;

7.1.2.2 The conditions under which DMH/DAIL may continue to purchase services from the Agency while under provisional status; and

7.1.2.3 The requirements for a Plan of Corrective Action in order to be reconsidered for re-designation, including:

7.1.2.3.1 The specific areas needing correction

7.1.2.3.2 The timeframes within which the elements of the plan of correction will be addressed, not to exceed 180 days.

7.1.2.3.3 The criteria upon which the Plan of Corrective Action, and the subsequent report on implementation, will be evaluated for acceptability by the Commissioner

7.1.3 The notification of provisional status may serve as the notification of intent to de-designate an Agency or cancel a Specialized Service

Agency contract.

7.1.4 The Commissioner may place an Agency on provisional status without intent to de- designate or cancel the specialized service contract.

7.1.5 Corrective Action Plan

7.1.5.1 If the Commissioner determines that an Agency fails to comply with this Rule, the Agency's service plan, or otherwise fails to satisfactorily meet the needs of individuals, the Commissioner shall provide a written notice to the Agency that outlines the deficiencies and the potential for termination of designated status.

~~7.1.5.2~~7.1.5.1.1 The Agency shall submit a Plan of Corrective Action (Plan) to the Commissioner no later than thirty (30) days after receipt of the Commissioner's notification of provisional status.

~~7.1.5.3~~7.1.5.1.2 If the Plan is deemed acceptable by the Commissioner, the Agency provisional status will be extended for the timeframe specified within the Plan.

7.1.5.1.3 If the Plan is deemed not acceptable by the Commissioner, the Commissioner shall notify the Agency, in writing, of intent to proceed with de-designation or contract cancellation or the need for additional information. This extension for additional information will be no longer than 15 days.

7.1.5.2 If the Commissioner outlines deficiencies that assert~~s~~ that some or all the specified deficiencies directly jeopardize client safety and well-being, the Agency shall immediately act to correct any deficiency.

7.1.5.2.1 The Department and Agency shall meet within three (3) business days and develop a written corrective action plan addressing measures to prevent reoccurrence of the deficiency.

~~7.1.5.4~~7.1.5.3 At the end of the specified timeframe, the Agency shall submit a report to the Commissioner documenting that the corrections were made in accordance with the Plan.

~~7.1.5.5~~7.1.5.4 If the Corrective Actions are not acceptable by the Commissioner or if the Agency fails to take immediate remedial steps in the case of situations involving risks to patient safety, the Commissioner shall notify the Agency, in writing, of intent to proceed with de-designation or contract cancellation or continuation of provisional status.

~~7.1.5.6~~7.1.5.5 Continuation of Provisional status may be granted for a period not to exceed 180 days and will only be granted in situations in which the Agency is making significant gains and is expected to meet or exceed all requirements within the additional timeframe granted.

7.1.6 While an Agency is under provisional status for a specific population, DMH/DAIL may:

7.1.6.1 Suspend or amend terms of the annual contract or other service agreements between DMH/DAIL and the Agency, as allowed by contract.

7.1.6.2 Contract with other agencies to ensure uninterrupted service provision and quality.

7.1.6.3 Initiate the process to identify a new Designated Agency for that geographic area.

7.1.6.4 Take additional actions, as determined necessary by the Commissioner, to protect the well-being of individuals.

7.2 De-Designation and Cancellation of Specialized Service Agency Contract

7.2.1 The Commissioner may initiate the process of Agency De-designation (for a Designated Agency) or contract cancellation (for a Specialized Service Agency) if:

7.2.1.1 The Agency has been placed on provisional status and has exhibited the unwillingness or inability to improve performance as specified in the Plan of Corrective Action and within the timeframes established by DMH/DAIL; or

7.2.1.2 The Commissioner determines an Agency meets one or more of the criteria identified in Section 7.1.1.

7.2.2 The date for de-designation or contract cancellation shall be determined by the Commissioner and shall be dependent on the actions necessary to ensure that individuals within the geographic area of the Agency continue to receive the supports and services that they need.

7.2.3 The Agency to be de-designated or have its contract cancelled shall be

notified in writing of:

7.2.3.1 The effective date for de-designation or contract cancellation;

7.2.3.2 The circumstances by which DMH/DAIL will continue to purchase services through the Agency until de-designation or contract cancellation is effective; and

7.2.3.3 The actions DMH/DAIL will undertake to replace the Agency's functions and ensure high-quality service provision to persons living in the geographical area.

7.2.4 The Agency to be de-designated or have its contract cancelled shall inform its current individuals of the change in the Agency's status, and provide them with information about future arrangements, as agreed upon with the Department(s)

7.2.5 At any time during the de-designation process for a specific population, DMH/DAIL may:

7.2.5.1.1 Suspend or amend terms of the annual contract or other service agreements between DMH/DAIL and the Agency, as allowed by contract.

7.2.5.1.2 Take additional actions, as determined necessary by the Commissioner, to protect the well-being of service individuals.

8.0 Appeals

8.1 A Designated Agency that has been notified by the Commissioner of the intent to proceed with de-designation, or to not grant initial designation status, shall have the right to appeal the decision.

8.2 Any specialized service agency that has been notified by the Commissioner of the intent to cancel or not renew its contract, or substantially modify its role and responsibilities, shall have the right to appeal the decision.

8.3 Notice of Appeal. A written Notice of Appeal, stating the grounds for such appeal, shall be filed with the Commissioner within 10 days following the Agency's receipt of notification from the Commissioner of the intent to de-designate the Agency, cancel or not renew Agency contracts or not to designate the Agency initially. Agencies do not have the right to appeal decisions related to placement on provisional status.

8.4 Notice of hearing. As soon as practicable, a date certain shall be set for the appeal hearing, with notice to all parties. Within forty-five (45) days of the filing of the Notice of Appeal, a hearing shall be conducted by the Commissioner or their designee (hereafter "Commissioner"). The purpose of the hearing shall be to ensure

that the Commissioner has considered all pertinent information available prior to making a final decision regarding the Agency's status.

8.5 Disclosure of Information. Upon request of any party related to the appeal, the Department shall promptly provide the party with all public documents and records it relied upon in reaching its decision.

8.6 Conduct of hearing. At the hearing, the parties may present evidence and witnesses and be represented by counsel. The record of the hearing shall include a recording of the hearing, records relied upon, and any other information deemed by the Commissioner to be necessary for the proceeding. DMH and/or DAIL shall retain this record per the State of Vermont Record Retention schedule. The proceedings shall be open to the public. When public access threatens confidentiality rights, any party to the proceeding may seek appropriate measures to protect confidentiality, and the Commissioner shall take necessary steps to protect confidentiality.

8.7 Notice of decision. The Commissioner shall issue a final written decision within thirty (30) days of the hearing based upon the evidence presented orally and in writing. The decision shall be sent to all parties.

8.8 If any of the parties wish to appeal the decision of the Commissioner, they may submit an appeal, in writing, to the Secretary of the Agency of Human Services within ten (10) days of receipt of the Commissioner's decision. The Secretary of the Agency of Human Services shall base their review on the record presented to the Commissioner.

8.9 The Secretary of the Agency of Human Services shall issue a written decision within 30 days. The decision of the Secretary of the Agency of Human Services will be the final action of the Agency. If further review is available to an aggrieved party, it shall be brought in the court authorized to review civil matters within 10 days of receipt of the final Agency of Human Services action and shall be based upon the record established at the hearing before the Commissioner and the decision of the Secretary of the Agency of Human Services

9.0 Investigations and Enforcement

9.1 The Departments will routinely review agency operations and services offered or supported by the Designated or Specialized Service Agency to ensure that they are operated in compliance with relevant department rules, regulations, contract/grant requirements, division mission, and the local service plan. These reviews may include site visits and may or may not be announced in advance.

~~9.1~~• A review includes, but is not limited to, a review of clinical records, the review of individual client care, interviews of care providers and their supervisors, a review of the results of internal quality assurance activities, and a review of the results of internal critical incident investigations, provided however, that nothing contained in the review shall require the Agency to

provide the Department with information protected by the Attorney-Client Privilege or derived from peer review committee meetings as described in 26 V.S.A. § 1441 et seq.

9.2 The Departments may additionally investigate of actions of an Agency in response to concerns or feedback or as a result of information received from other sources. Such investigations shall include direct communication and deliberation with the entity filing the concerns or feedback or providing the information to ensure that the Department has accurate and complete information. Agency reviews may or may not be announced in advance.

9.3 The Agency~~DA~~ must require its employees, contractors, and providers to furnish, upon reasonable request, to the Agency of Human Services, Department of Disabilities, Aging and Independent Living, Department of Mental Health, Department of Vermont Health Access, the Office of the Attorney General, Medicaid Fraud Unit, and the Federal Department of Health and Human Services, any record, document, or other information for health oversight activities; a review, audit, or investigation of fraud, abuse; or other violation of law. Upon request of an entity identified in this paragraph, The Agency~~DA~~ must provide, on a reasonable basis and free of charge, both inspection of original or copied documents held by the Agency~~DA~~ or any of its employees, contractors, and providers to the requester or to a HIPAA health oversight agency identified by and contracted with the Department.

~~9.2~~**9.4** The Agency shall establish procedures by which it will report all suspected Medicaid fraud~~,~~ or abuse, or other violations of law to AHS, ~~the Department,~~ the Department of Vermont Health Access, and the Office of the Attorney General.

~~9.3~~**9.5** Findings of these reviews will be considered in the re-designation and contract renewal process.

Rule on Agency Designation

Contents

1.0 Authority

1.1 This rule is adopted pursuant to 18 V.S.A. §§ 8907, 8911(b), 8913, 8726(b), 8730, and 8731(c).

2.0 Purpose

2.1 This rule establishes the requirements for the designation of nonprofit agencies ("Designated Agencies") by the Agency of Human Services (AHS) to provide community mental health and intellectual/developmental disability services within distinct geographic areas of Vermont. Additionally, this rule establishes the responsibilities of "Specialized Service Agencies" as assigned by AHS to provide either community mental health or intellectual/developmental disability services within the State.

2.2 AHS will review this rule annually and update its content, as deemed necessary by AHS, to promote alignment with nationally recognized best practices, state initiatives advancing quality and equity in care delivery, and all applicable state and federal laws.

3.0 Definitions

3.1 "Adverse benefit determination" means any of the following:

3.1.1 Denial or limited authorization of a requested service, including determinations based on the type or level of service, requirements of medical necessity, appropriateness, setting, or effectiveness of a covered service,

3.1.2 Reduction, suspension, or termination of a previously authorized service,

3.1.3 Denial, in whole or in part, of payment for a service,

3.1.4 Failure to provide services in a timely manner, as defined by the Agency of Human Services,

3.1.5 Failure to act within timeframes regarding standard resolution of grievances and appeals,

3.1.6 Denial of a beneficiary's request to obtain services outside the network,

3.1.7 Denial of a beneficiary's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other beneficiary liabilities."

3.2 "Agency" means a Designated Agency (DA) or a Specialized Service Agency (SSA).

3.3 "Board" means the Board of Directors (or equivalent) of an Agency.

3.4 "Catchment Area or Service Area" means a Designated Agency's geographic service area, as determined by the Commissioner of DMH and/or the Commissioner of DAIL.

3.5 "Certification" means the process by which DAIL's Developmental Disabilities Services Division (DDSD) determines whether a provider meets minimum standards to provide publicly funded supports or services to people with intellectual/ developmental disabilities and/or their families. Certification and designation are interchangeable terms for the purposes of DDSD.

3.6 "Commissioner" means either the Commissioner of Mental Health (DMH) or the Commissioner of Disabilities, Aging, and Independent Living (DAIL), as indicated. "Commissioners" refers to both collectively.

3.7 "Complaint" means the same as "Grievance" below, with the exception that it can be resolved in one interaction with the initial staff receiving the issue.

3.8 "Day" means calendar day, not business day, unless otherwise specified.

3.9 "Department" means the Department of Disabilities, Aging and Independent Living (DAIL), or the Department of Mental Health (DMH), as indicated. "Departments" means both DAIL and DMH collectively.

3.10 "Developmental Disability" (DD) means an intellectual disability or an autism spectrum disorder which occurred before age 18 and which results in significant deficits in adaptive behavior that manifested before age 18.

3.10.1 Temporary deficits in cognitive functioning or adaptive behavior as the result of severe emotion disturbance before age 18 are not a developmental disability.

3.10.2 The onset after age 18 of impaired intellectual or adaptive function due to drugs, accident disease, emotional disturbance or other causes is not a developmental disability.

3.11 "Disclosed individual" means an individual who openly discloses their disability to the Agency.

3.12 "Disability" means, with respect to an individual:

3.12.1 A physical or mental impairment, including alcoholism and substance abuse, as defined by the Americans with Disabilities Act, that substantially limits one or more of the major life activities of the individual; or

3.12.2 A record of such an impairment; or

3.12.3 Being regarded as having such an impairment.

3.13 "Family member" means an individual who is related to a person with a disability by blood, marriage, civil union, or adoption, or considers themself to be family based upon bonds of affection, and who currently shares a household with the individual with a disability or has, in the past, shared a household with that individual. For the purposes of this definition the phase, "bonds of affection" means enduring ties that do not depend on the existence of an economic relationship. See the section on Individual Rights for limitations on family member participation.

3.14 "Grievance" means an expression of dissatisfaction about any matter that is not an adverse benefit determination, including an individual's right to dispute an extension of time proposed by the Medicaid Program and the denial of a request for an expedited appeal. Possible subjects for grievances include, but are not limited to, the quality of care or services provided, aspects of interpersonal relationships such as rudeness of a provider or employee, or failure to respect the member's rights.

3.15 "Individual" or "Individual with Lived Experience" means a person who is, or was, eligible to receive services from an Agency because of their disability.

3.16 "Individual Appeal" means an internal review by the Medicaid Program of an adverse benefit determination."

3.17 "Intellectual Disability" defined.

3.17.1 Intellectual disability means significantly sub-average cognitive functioning that is at least two standard deviations below the normative comparison group. On most tests, this is documented by a full-scale score of 70 or below, or up to 75 or below when taking into account the standard error of measurement, on an appropriate norm-reference standardized test of intelligence and resulting in significant deficits in adaptive behavior manifested before age 18.

3.17.2 Intellectual disability includes severe cognitive deficits which result from brain injury or disease if the injury or disease resulted in deficits in adaptive functioning before age 18.

3.18 "Local Community Services Plan," means the plan required by 18 V.S.A. § 8908 which describes the methods by which an Agency will provide those services." This was previously referred to as a Local System of Care Plan.

3.19 "Medicaid Program" means:

3.19.1 The Department of Vermont Health Access (DVHA) in its managed care function of administering services, including service authorization decisions, under the Global Commitment to Health Waiver ("the Waiver");

3.19.2 A Department within the Vermont Agency of Human Services (AHS) with which DVHA enters into an agreement delegating its managed care functions including providing and administering services such as service authorization decisions, under the Waiver;

3.19.3 A Designated Agency or a Specialized Service Agency to the extent that it carries out managed care functions under the Waiver, including providing and administering services such as service authorization decisions, based upon an agreement with Department within AHS; and

3.19.4 Any subcontractor performing service authorization decisions on behalf of a Department within AHS.

3.20 "Provider Agreement" means the service contract signed by the Agency and either the Department of Disabilities, Aging and Independent Living, the Department of Mental Health, or the Vermont Department of Health.

3.21 "Related party" means all affiliates of an Agency, including the affiliate's management and their immediate family members/significant others; the affiliate's principal owner(s) and families/significant others; investments accounted for by the equity method; beneficial employee trusts managed by management of the Agency and any party that may, or does, conduct business with the Agency and has ownership, control, or significant influence over the management or operating policies of another party to the extent that an arm's length transaction may not be achieved.

3.22 "Related-party transaction" means a transaction in which one party to the transaction has the ability to impose contract terms that would not have occurred if one of the parties was not a related party.

3.23 "Self/family-managed" means the Individual or their family plans, establishes, coordinates, maintains, and monitors all developmental disabilities services and manages the Individual's budget within federal and state guidelines.

3.24 "Share-managed" means that the Individual or their family manages some but not all Medicaid-funded developmental disabilities services, and an agency manages the remaining services.

3.25 "Specialized Service Agency" or "SSA" means an agency contracted by the Department(s) to provide specialized services or offer a greater choice in services which are needed by individuals with a serious mental illness, or children and adolescents with a severe emotional disturbance, and/or for persons with developmental disabilities.

3.26 "System of care plan" and "State system of care plan" means the plan require by 18 V.S.A. §8725 describing the nature, extent, allocation, and timing of services that will be provided to people with developmental disabilities and their families.

4.0 Designated and Specialized Service Agencies

4.1 General Requirements

4.1.1 A Designated Agency (DA) and Specialized Service Agency (SSA) shall comply with all applicable State and federal regulations, contracts, grant agreements, or other legally enforceable documents

4.1.2 An Agency contracted through DAIL shall comply with the State System of Care Plan for Developmental Disabilities Services.

4.1.3 An Agency contracted through DMH shall comply with the DMH Mental Health Provider Manual.

4.1.4 Agency designations shall be determined based on the specific population(s) served by the Department(s):

4.1.4.1 Individuals with intellectual/developmental disabilities; and

4.1.4.2 Adults with mental illness, or with significant mental health needs; and children and adolescents with, or at risk of, severe emotional disturbance, or with significant mental health needs, and their families

4.1.5 An Agency may have multiple designations.

4.1.6 Agency designations are for a period not to exceed four years, unless extended by the Commissioner.

4.1.7 Agencies may provide services directly and/or may enter into agreements with individuals or organizations for the provision of services.

4.1.8 Agencies designated in the area of Developmental Disabilities may only provide services directly if they have been certified by DDS to deliver these services, as required by the 18.V.S.A., Chapter 204A.

4.1.9 Designated Agencies shall request and obtain approval from the appropriate Department(s) prior to any merger or contract that impacts service delivery with another Agency or organization when that merger or contract impacts service delivery.

4.2 Agency Designation Process

4.2.1 Initial Designation

4.2.1.1 A Designated Agency shall be incorporated to do business in the State of Vermont as a nonprofit organization and shall have received or applied for federal recognition as a tax-exempt charitable organization as defined in Section 501(c)(3) of the Internal Revenue Code of the United States.

4.2.1.2 An organization may apply for initial designation as a Designated Agency if:

4.2.1.2.1 The Designated Agency for the service area is notified by the Commissioner of intent to de-designate; or

4.2.1.2.2 The Designated Agency for the service area will not apply for re-designation.

4.2.1.3 An organization may apply for initial designation as a Specialized Service Agency if:

4.2.1.3.1 The organization offers a distinctive approach to service delivery and coordination

4.2.1.3.2 Services meet distinctive individual needs

4.2.1.4 An Agency shall apply for initial designation using the application provided by the Department(s).

4.2.1.5 Designated Agencies may apply for new designation for an additional population, provided they meet the requirements and there is not an existing Designated Agency in the geographic area for that population or the existing Designated Agency is not applying for re- designation.

4.2.1.6 Each Designated Agency shall be evaluated for re-designation every four years.

4.2.1.7 The State Program Standing Committee (Section 6.0) for the relevant service system shall evaluate each application for initial or re-designation, and any relevant supplemental information.

4.2.1.8 The State Program Standing Committee shall submit a written recommendation to the Commissioner regarding initial or re-designation, and supporting documentation for this recommendation.

4.2.1.9 An Agency not chosen for initial designation shall have the right to appeal the decision pursuant to 18 VSA 8911(b).

4.2.2 Re-designation

4.2.2.1 An Agency seeking a renewal of designation shall continue to meet the requirements established for initial designation, as well as the following requirements:

4.2.2.2 Agencies desiring re-designation shall submit a letter of intent to apply for re-designation to the Commissioner no more than thirty (30) days after the Agency's receipt of the Commissioner's written notice letter.

4.2.2.3 A formal application for re-designation shall be submitted by the Agency no more than sixty (60) days after the Agency's receipt of the Commissioner's written notice.

4.2.2.4 Departments shall review relevant information in determining whether re-designation is appropriate, including, but not limited to: Continuous Quality Improvement Plans; Local Community Services Plans; and Agency performance data.

4.2.3 If an agency has received accreditation from one or more state or national bodies, the Department(s) may substitute relevant accreditation review findings for related designation requirements.

4.2.4 The Commissioner(s) shall elicit public comment for a period no less than two weeks and/or hold a public hearing to obtain input from interested public, and will seek input from the appropriate State Program Standing Committee(s).

4.3 Service Delivery Policies

4.3.1 Agencies shall comply with the requirements included in any contracts or agreements with the Vermont Agency of Human Services or of its departments.

4.3.2 An Agency shall not preclude anyone from receiving the services of the Agency due to inability to pay per 18 V.S.A. § 8910(c).

4.3.3 A Designated Agency shall ensure timely provision of services for the individual, as defined in regulation, State System of Care Plan for Developmental Services, and in the DMH Mental Health Provider Manual for Mental Health Services.

4.3.3.1 A Designated Agency shall not discriminate in the administration of programs, services, or activities or exclude any individual from participation in programs, services, or activities based on race, religion, color, national origin, genetic information, marital/familial

status, sex, sexual orientation, gender identity, age, pregnancy status, place of birth, crime victim status, military, veteran status, disability, or any other protected status.

4.3.3.2 The inability of a Designated Agency to meet the needs of an individual shall not be a factor in any decision by the Designated Agency to refuse to serve the individual.

4.3.3.3 The Designated Agency will not refuse services based on an individual's lack of stable housing.

4.3.4 The Department acknowledges that the Agency may be required to serve clients with extraordinary needs for treatment, safety, or services.

4.3.4.1 Upon Agency request, the Department Commissioner (or designee) and the Agency shall meet within five (5) business days to discuss feasibility, risk, and funding, including whether services should be provided by another designated agency, a specialized service agency, or another contractor.

4.3.4.2 The parties shall reduce in writing an individualized plan of care necessary to support the client.

4.3.4.3 If the parties fail to meet within five (5) business days, either party may notify the AHS Secretary (or designee), who shall respond within five (5) business days.

4.3.4.4 If, within ten (10) business days of the initial request, the meeting has not occurred, has not been scheduled by Agreement, or in the reasonable faith efforts do not result in resolution, either party may request that the dispute be submitted to an independent mediator, who shall be chosen by agreement of the parties and shall cooperate in good faith to participate in and complete the mediation within sixty (60) days of the request for mediation. The parties will agree to the terms and conditions of the mediation in consultation with the mediator. The parties may extend the mediation beyond sixty (60) days by written agreement. Either party may be represented or assisted in the mediation by legal counsel at such party's own expense.

4.3.5 If Agency revenues arising out of their Provider Agreement decrease or if the costs of operations necessary to the performance of their Provider Agreement increase due to circumstances beyond the Agency's reasonable control, then Agency shall have the right to request from the Department a planned reduction of expenditures or

services that are required to be provided.

4.3.5.1 Any proposed reduction of services will be considered only as is consistent with the Agency's independent obligations as a Medicaid provider.

4.3.5.2 Prior to implementing any reduction in services or expenditures, the Agency shall request to meet and consult with the Department Commissioner or designee.

4.3.6 Services to be provided by the Agency may be subject to interruption, delay, or suspension as a result of circumstances or acts beyond the control of the Agency, which may potentially include public health emergency or work force shortage that renders the full performances of such services illegal or impossible.

4.3.6.1 In the event of such circumstances, Agency must demonstrate to Department that payments are needed to enable the Agency to continue to compensate and retain employees and maintain other resources for the immediate response to the emergency, and to provide services to clients as soon as possible.

4.3.6.2 If Department determines that payments are needed based upon the Agency's demonstration, Department will continue payments to the Agency subject to conditions and limitations that may be imposed by Department, and to the extent allowable.

4.3.6.3 Agency will provide notice to Department as to any ongoing adjustments or reductions to the services provided.

4.3.7 The Agency will develop, plan, implement, and arrange for the services set forth in the Agreement in accordance with established funding and administrative policies and regulations of the State of Vermont and of the federal government, including those administrative requirements set by the Centers for Medicare and Medicaid Services applicable to Medicaid and Medicaid services.

4.3.7.1 If the State of Vermont's funding and administrative policies and regulations are modified, Agency shall receive written notice from the State and have a reasonable period of time to implement any required changes, not to exceed 90 calendar days, unless a shorter period is required by law or a longer period of time is agreed to by the parties.

4.3.7.2 If the State of Vermont's funding and administrative polices and regulations change in any material respect within 90

calendar days of the execution of an Agreement with the State, Agency shall have a reasonable period of time following execution of the Agreement, not to exceed 90 calendar days, unless otherwise agreed, to implement any required changes

4.3.8 The Designated Agency shall ensure, within its service area:

4.3.8.1 That a comprehensive, integrated, accessible and responsive array of services, staff, and supports is available to meet the service needs of eligible persons consistent with the established service and budget priorities and allocations;

4.3.8.2 The provision of all comprehensive services, as detailed in the State System of Care Plan for Developmental Services; and in the DMH Mental Health Provider Manual for Mental Health Services.

4.3.8.3 The provision of crisis response services for the designated populations;

4.3.8.4 Providing, and/or contracting for the provision of, secure and safe services for people who are in the custody of the Commissioner

4.3.8.5 The provision in a timely manner of services needed to assist the Commissioner in any relevant legal proceedings, including transmission of records and witness statements;

4.3.8.6 The provision of timely return to the community from inpatient or institutional placements;

4.3.8.7 The provision of timely processing of: individual applications for service, information and referral to community and government resources, education about choices for service, and support options, including self/family-managed services where applicable;

4.3.8.8 Effective collaboration with related community/human service agencies providing support services in the region, including but not limited to: physical or dental health services, social services, housing and nutrition, substance use disorder services, education services, employment services, relevant state departments/agencies, local emergency departments, law enforcement, Designated and Specialized Service Agencies, veteran and active military services, peer service organizations, therapeutic foster care services, including collaboration between Mental Health and Developmental Disabilities within the Agency, and higher levels of care.

4.3.9 The Agency shall facilitate all necessary referrals to external providers.

4.3.10 The Agency shall respond to referrals they receive in a timely manner.

4.3.11 The Agency shall continue care coordination for individuals who are referred to a higher level of care, including participation with discharge planning for their expected timely return to the client's community of choice. Documentation for such care shall be maintained for the duration of the Agency's provider agreement, and if, applicable, designation status.

4.3.12 The Agency shall ensure that contracts are in place with all service providers with whom the Agency contracts for services using DMH/DAIL funds. The contracts shall detail the roles and responsibilities between the two entities regarding individual services and administrative functions (including information sharing and reporting, fiscal monitoring of individual services, and service plan implementation).

4.3.13 The Agency shall provide necessary information and guidance to the individual or family member regarding their responsibilities for shared management. Individuals and families shall be provided information regarding the option to self/family-manage services.

4.3.14 The Agency shall serve as the state-designated placement agency for all shared living placements, including foster home placements for children and adults, in accordance with State law.

4.3.14.1 The Agency shall work with the State to determine rates for difficulty-of-care payments as compensation for providing additional care necessitated by a physical, mental, or emotional disability for which the State has determined additional compensation is required, except for foster homes designed at the Department of Children and Families.

4.4 Early Periodic Screening, Diagnosis and Treatment

4.4.1 The Agency will provide developmental services pursuant to the Early and Periodic Screening, Diagnostic and Treatment based on medical necessity for children under age 21 enrolled in Medicaid in their servicearea.

4.4.2 The Agency will ensure intake, evaluation, determination of medical necessity, and provision of services in their service area. This includes providing Children's Personal Care Services assessments for children within the service area.

4.5 Agency Organization and Administration

4.5.1 The Agency shall have administrative structures which encourage open

communication among all entities (internal and external) and which support the development of mechanisms to identify and respond to organizational needs and concerns. This includes, but is not limited to, processes that support:

4.5.1.1 Consistent values, mission, vision and goals displayed by all Agency staff and policies.

4.5.1.2 Communication and collaboration among managers, staff and administration related to programmatic planning for both short-term and long-term effectiveness. This includes the sharing of organizational outcomes and performance improvement plans.

4.5.1.3 Timely and shared decision-making by program managers, supervisors and/or administration.

4.5.1.4 Positive staff morale and regular review of staff satisfaction and feedback.

4.5.1.5 Communication and collaboration with individuals, families, other providers and community partner organizations.

4.5.1.6 Positive community presence and support of key community partner organizations.

4.5.1.7 The Agency shall have an organizational chart showing all reporting and supervisory relationships by position titles.

4.6 Culturally and Linguistically Appropriate Services (CLAS)

Designated and Specialized Service Agencies shall align with the National Standards for Culturally and Linguistically Appropriate Services (CLAS)[1] in Health and Health Care. Agencies will provide effective, equitable understandable, and quality services that are responsive to the diverse cultural heath beliefs and practices, preferred languages, health literacy, and other communication needs of individuals served.

This will include, at a minimum:

4.6.1 Promoting CLAS through policy and practice

4.6.2 Recruitment and support of culturally and linguistically diverse staff and leadership

4.6.3 Training on CLAS for staff, leadership, and the Board

4.6.4 Language access services, as described in the Accessibility section of this Rule (4.15)

4.6.5 Ongoing assessment of the organization's CLAS-related needs and integration into Continuous Improvement goals

4.6.6 Collect and maintain accurate and reliable demographic data to monitor and evaluate the impact of CLAS on health equity and outcomes to inform service delivery

4.6.7 Ensure information related to the grievance and appeal process is accessible to the individual

4.6.8 Ensuring culturally and linguistically appropriate intake and assessment of eligibility for services.

4.7 Board of Directors (or equivalent)

4.7.1 Board Duties

The Board of a Designated Agency shall:

4.7.1.1 Meet the requirements established by 18 V.S.A. § 8909:

4.7.1.1.1 Must be representative of the demographic makeup of the area served.

4.7.1.1.2 At least 51% of the Board must be individuals with lived experience or family members of individuals with lived experience.

4.7.1.1.3 The Board will survey members annually to ensure the requirement is met.

4.7.1.2 Be responsible to the Department(s) for the application and implementation of Agency established policies related to DMH/DAIL funding.

4.7.1.2.1 The Board shall appoint an executive director (or equivalent) who shall be responsible to the Board for all Agency activities and for the application and implementation of Agency established policies.

4.7.1.3 Aligning with 3 V.S.A. § 1222, Board members will be aware of potential conflicts of interest, and disclose the conflict, recuse themselves, and/or discuss with the Board as relevant. This is especially in cases of:

4.7.1.3.1 Executive Director (or equivalent) hiring, review, and/or firing

4.7.1.3.2 New board member selection

4.7.1.4 Determine and promote the mission of the Agency.

4.7.1.5 Assess community needs and resources and provide recommendations to Agency for how to address those identified needs.

4.7.1.6 Review Agency coordination with other service systems and agencies within the geographic area.

4.7.1.7 Review, and provide recommendations for, the Continuous Quality Improvement Plan for each DMH/DAIL population served by the Agency.

4.7.1.8 Review the service capacity in the geographical area to meet the needs of eligible service recipients, within the guidelines established by, and the resources available from, DMH/DAIL.

4.7.1.9 Oversee that policies and services are consistent with the mission and outcomes of the State of Vermont, the Agency of Human Services, DMH/DAIL, and the needs of individuals and families receiving services.

4.7.1.10 Recommend or approve new Agency policy and significant policy updates.

4.7.1.11 Review and approve the Agency budget and monitor Agency financial status and staff compensation rates.

4.7.1.12 Oversee service quality, including the review of aggregate individual satisfaction information, and aggregate information on grievances and individual service appeals.

4.7.1.13 Ensure that the Agency maintains a technological infrastructure to conduct business effectively with external entities, including DMH/DAIL and other state and local service agencies and systems.

4.7.1.14 Maintain confidentiality regarding the information it receives during its deliberations on Agency staff and individuals.

4.7.1.15 Ensure that Agency staff training is conducted in an effective and timely manner.

4.7.2 Board By-Laws

4.7.2.1 The board shall adopt bylaws that include, but are not limited to:

4.7.2.1.1 Clearly written responsibilities and authorities of the Executive Director (or equivalent).

4.7.2.1.2 The powers and duties of the Board, its standing and special committees, and the responsibilities of individuals serving as board members, including attendance requirements.

4.7.2.1.3 That Board meetings be open to the public, except when the Board determines the need to convene in Executive Session.

4.7.2.1.4 A statement of its policies and procedures for disposal of assets and debts and obligations in the event of dissolution of the Agency, including the return to DMH/DAIL of any assets and property directly obtained with DMH/DAIL funds, as allowed by law. When a Designated Agency merges with another organization, the Agency shall obtain written authorization from DMH/DAIL approving the transfer or requiring return of the assets and property purchased directly with DMH/DAIL funds.

4.7.2.1.5 At a minimum, Board By-Laws must include:

4.7.2.1.5.1 The requirement to have representation from individuals with the appropriate financial and legal expertise.

4.7.2.1.5.2 The requirement that no employee of the Agency shall serve on the Board.

4.7.2.1.5.3 The requirement to replace within 120 days any vacancy.

4.7.2.1.5.4 The requirement that each member of the Board of Directors will receive training in corporate governance.

4.7.2.1.5.5 The requirement that at least once a quarter, the members of the Board of Directors will be presented and will review the financial statements, allowing them to: (1) Effectively oversee investments and business opportunities not directly related to the provision of

services and (2) Effectively oversee the amount and types of compensation and benefits extended to executive and senior management.

4.7.2.1.5.6 The requirement that at least annually, the Board will review and approve salary, benefit, and compensation packages for personnel earning $150,000 or more per annum, including any changes to those packages.

4.7.3 Records and Retention

4.7.3.1 Documents presented to the Board of Directors will be kept for at least two years, including minutes of the Board of Director meetings and meetings of committees thereof.

4.7.3.2 Board documents shall be made available to the State upon request.

4.7.3.3 The Agency will provide copies of the Board approved policies to the Department upon request.

4.8 Local Program Standing Committee

4.8.1 The Agency shall establish a Local Program Standing Committee for each population served by the Agency.

4.8.2 Committee Structure

4.8.2.1 Each Local Program Standing Committee shall be comprised of at least five members, a majority of whom shall be disclosed individuals with direct lived experience and/or family members.

4.8.2.1.1 In Developmental Disabilities Services, at least three members shall be people with direct lived experience receiving services.

4.8.2.1.2 In Mental Health Services:

4.8.2.1.2.1 At least two members shall have direct lived experience receiving adult mental health services; and

4.8.2.1.2.2 At least two members shall have direct lived experience receiving child, youth, and family services, or be family

members of an individual with that lived experience.

4.8.2.2 At least one member of each Local Program Standing Committee shall serve as a voting member of the Agency Board of Directors (or equivalent).

4.8.2.3 The Local Program Standing Committee may be comprised totally of agency board members if criterion 4.8.2.1 is met.

4.8.2.4 Committee members shall have the knowledge and Agencies shall provide the training necessary to be active participants in the development of the Local Community Services Plan or Community Needs Assessments.

4.8.2.5 The Agency Board of Directors (or equivalent) shall determine its policy for reimbursing committee members for expenses that, if not reimbursed, would prohibit the member from attending committee meetings.

4.8.3 Duties and Responsibilities

4.8.3.1 Local Program Standing Committee responsibilities shall include:

4.8.3.1.1 Providing recommendations to the Agency's leadership regarding the appointment of a new program director or the person responsible for program services.

4.8.3.1.2 Providing feedback about Agency operations, management, and quality to the program services director at least annually, including the review of:

4.7.3.1.2.1 Aggregate results of staff, individual, and, if available, community partner organization satisfaction surveys;

4.7.3.1.2.2 Agency or program training plan, as described in 4.12, which shall be updated at least every three years and reviewed at least annually for DDS;

4.7.3.1.2.3 Aggregate results from DMH/DAIL quality processes, and any corrective actions planned or completed;

4.7.3.1.2.4 Agency Continuous Quality Improvement

plans and corresponding results; and

4.7.3.1.2.5 Aggregate complaint, grievance, and appeal data and agency responses to any themes identified.

4.8.3.1.3 Engaging with the Agency Executive Director (or equivalent) at least annually.

4.8.3.1.4 Assisting with the development of the Agency's Local Community Services Plan or Community Needs Assesment, including establishing priorities for resource allocation, and the schedule for the anticipated provision of new or additional services.

4.9 Continuous Quality Improvement

4.9.1 The Agency shall develop, implement, and maintain an effective, ongoing, Agency-wide data-driven Continuous Quality Improvement (CQI) plan, that is reviewed annually and updated at least every four years. The CQI plan shall:

4.9.1.1 Reflect the complexity of its organization, services, and population served, and involve all Agency services (including those services furnished under contract or arrangement with a third-party);

4.9.1.2 Prioritize indicators related to:

4.9.1.2.1 For mental health populations: Improved mental health outcomes;

4.9.1.2.2 For developmental services populations: Community inclusion; independent living; health and safety; trauma evaluation, prevention and mitigation.

4.9.1.3 Prescribe actions to demonstrate clinical care and operational improvements;

4.9.1.4 Include the perspectives of individuals and families and a mechanism for input by community partner organizations, as appropriate.

4.9.2 The Agency shall maintain documentation of its quality assessment and

performance improvement program and provide such documentation to the Department(s) upon request.

4.9.2.1 There shall be at least one measurable outcome for each goal of the CQI plan.

4.9.2.2 There shall be at least one responsible team, program, or staff role identified for each goal.

4.9.3 An Agency shall respond in a timely and effective manner to any Corrective Action Plan (or equivalent) approved by the Department(s).

4.10 Required Event Reporting and Fair Hearing Requirements

4.10.1 Individual Complaints, Grievances, and Individual Service Appeals

4.10.1.1 The Agency shall have policies and procedures to address individual complaints, grievances, and appeals that are consistent with requirements established by the Agency of Human Services, and the Department of Vermont Health Access (DVHA) Managed Care policy.

4.10.1.1.1 All grievances and individual service appeals shall be submitted to the Department of Vermont Health Access Warehouse within 14 calendar days of receipt

4.10.1.2 Complaints, grievances, and individual service appeals shall be reviewed regularly, including in aggregate, to identify and address any trends. At a minimum reviewers will include:

4.10.1.2.1 The Board of Directors (or equivalent), per 4.6.1.12

4.10.1.2.2 Local Program Standing Committees, per 4.7.3.1.2.5

4.10.1.2.3 State Program Standing Committees, per 6.2.1.8

4.10.1.2.4 The Department of Mental Health and Department of Disabilities, Aging and Independent Living

4.10.1.3 If a client of the Agency files an appeal with the

4.10.1.4 Department or requests a fair hearing, the Agency must promptly provide all requested clinical records and other necessary documentation to the Department

4.10.1.5 When a client files a request for a fair hearing, the Department shall notify the Agency and the Agency shall if requested, attend the hearing and testify.

4.10.1.6 The Agency shall be held solely liable for any final adverse decision of the hearing officer if it is determined by the Department that the adverse decision was the result of a lack of critical information requested by the Department that was not provided by the Agency.

4.10.2 Critical Incident Reports

4.10.2.1 Agencies will follow the requirements set forth by Departments:

4.10.2.1.1 For mental health services, the Critical Incident Reporting Requirements

4.10.2.1.2 For intellectual/developmental disabilities services, the DAIL Developmental Disability Service Division and Adult Services Division Critical Incident Reporting Guidelines

4.11 Data Policies

4.11.1 The Agency agrees that it is the Department's business associate as defined in 45 CFC 160.103 when performing certain functions including: administering grievances, appeals, data analysis, processing, and administration not associated with treatment and health care operations.

4.11.2 The Agency shall provide data directly to the Vermont Health Information Exchange (VHIE) and shall follow directives of all applicable state or federal regulations or agreements.

4.11.3 The Agency shall have a technological infrastructure that enables cost-effective information collection, analysis, and telecommunication functions sufficient to:

4.11.3.1 Submit all required data in the format and timeline specified by DMH/DAIL;

4.11.3.2 Monitor and report on service costs, accessibility, service provision, case mix, quality assurance and improvement, and outcome activities as required by this rule and the Provider Agreement; and consistent with the DMH Mental Health Provider Manual, the Medicaid Manual for Developmental

Disabilities Services and DDSD Encounter Data Submission Guidance for Home and Community-Based Services as appropriate; and

4.11.3.3 Support high quality and responsive service provision with the capacity to monitor the services delivered by contracted service providers, and/or persons who share-manage, consistent with this rule, the Provider Agreement, and the DMH Mental Health Provider Manual, the Medicaid Manual for Developmental Disabilities Services, and DDSD Encounter Data Submission Guidance for Home and Community-Based Services, as appropriate.

4.11.4 The Agency will remain compliant with national standards such as the United States Core Data for Interoperability (USCDI) for data transmission to the State of Vermont. The Agency will support the State of Vermont's efforts in promoting interoperability by maintaining a USCDI baseline and continue to raise the baseline as the standard evolves.

4.12 Local Community Services Plan

4.12.1 Each Designated Agency shall determine the need for community mental health and developmental disability services within the area served by the Agency and shall thereafter prepare a local community services plan which describes the methods by which the Agency will provide those services.

4.12.1.1 Community service plans should include developmental care core services referenced in DAIL's System of Care Plan; the following core mental health services: crisis services, outpatient mental health and substance use services, person- and family- centered treatment planning, community-based mental health care for veterans, targeted care management, psychiatric rehabilitation services, and screening, diagnosis, and risk assessment; and other services identified as necessary for the local community. If a core service is not included in the local community services plan, the Agency shall identify the reason for the omission in their community services plan.

4.11.1.2 The plan shall include a schedule for the anticipated provision of new or additional services and shall specify the resources which are needed by and available to the Agency to implement the plan.

4.11.1.3 The community services plan shall be reviewed annually.

4.12.2 The board shall consult with the following groups to determine the priorities of needs for community mental health and developmental disability services:

4.12.2.1 The Commissioners,

4.12.2.2 Individuals receiving services and their families and/or guardians for each population served,

4.12.2.3 Local Program Standing Committees,

4.12.2.4 Specialized Services Agencies,

4.12.2.5 Other organizations representing persons receiving services, including other governmental or private agencies that provide community services to the people served by the Agency

4.12.3 The plan shall encourage utilization of existing agencies, professional personnel, and public funds at both State and local levels in order to improve the effectiveness of mental health and developmental disability services and to prevent unnecessary duplication of expenditures.

4.13 Personnel Policies

4.13.1 The Agency shall have written personnel policies and procedures that promote high quality services.

4.13.1.1 The Agency shall employ qualified personnel who are assigned duties and responsibilities that are appropriate to their level of training, education, and experience, and are supervised accordingly.

4.13.1.2 The Agency shall have written policies and procedures for staff evaluation that include regular supervisory review and shall demonstrate that these policies and procedures are followed.

4.13.1.3 The Agency shall have a position description for each employee that clearly delineates the functions for which the employee will be held accountable and to whom they report. The position description shall also describe the education and experience required for the position.

4.13.1.4 The Agency shall have written policies prohibiting discrimination as described in 4.3.3.1.

4.13.1.5 The Agency shall maintain a written workplace

violence prevention and crisis response policy that meets or exceeds the requirements of 18 V.S.A.§7114.

4.13.2 Staff Training

4.13.2.1 The Agency shall develop a training plan for all staff and sub-contractors. The training plan may have different expectations for different staff roles. The plan shall be updated annually for developmental disability services and at least every three years for mental health services. Training shall address:

4.13.2.1.1 Cultural responsiveness with consideration for groups identified in 4.3.3.1;

4.13.2.1.2 Person-centered and family-centered, recovery-oriented, evidence-based and trauma-informed care;

4.13.2.1.3 Primary care/co-occurring mental health/substance use integration;

4.13.2.1.4 Non-physical intervention and de-escalation techniques;

4.13.2.1.5 Risk assessment, suicide prevention and suicide response; and

4.13.2.1.6 The roles of families and peers.

4.13.2.1.7 The Continuity of Services Plan – see section 4.17

4.13.2.2 The Agency shall provide orientation training to new staff and document this training.

4.13.2.3 The Agency shall include individuals and/or families in the design, delivery, and evaluation of training for staff, as appropriate

4.13.2.4 Agencies shall implement training for staff consistent with the requirements included in Health Care Administrative Rule 7.100 titled "Disability Services-Developmental Disabilities " and/or those listed in the DMH Mental Health Provider Manual, as appropriate.

4.14 Individual Confidentiality Policies

4.14.1 The Agency shall have written policies and procedures that protect the confidentiality of individual information, consistent with applicable state and federal regulations, including but not limited to:

4.14.1.1 Language in staff and contracted service providers' contracts that explicitly states expectations about the confidentiality of service or care plan information.

4.14.1.2 Written policies and procedures for assuring informed consent.

4.14.1.3 Written policies and procedures that safeguard medical records and other individual information and adhere to all applicable confidentiality policies.

4.15 Individual Rights

4.15.1 The Agency shall have a written policy ensuring the rights of all individuals are observed consistent with state and federal law, including 18 V.S.A. § 8728, as well as the State System of Care Plan for DAIL, and the DMH Mental Health Provider Manual, and those identified in this rule.

4.15.2 Additionally, the Agency shall ensure that individuals are afforded the rights listed below.

4.15.3 General Rights

4.15.3.1 The individual has the right to be informed of their rights at intake and/or initial evaluation, as evidenced by the individual (or representative's) signature. Exceptions may be made for no signature when thoroughly documented with a rationale;

4.15.3.2 The right to be treated with dignity and respect by all staff;

4.15.3.3 The right to participate in decision making regarding services, treatment plans, ongoing supports, and practices; and

4.15.3.4 The right to information that is needed to plan appropriate service and supports.

4.15.4 Privacy Rights

4.15.4.1 Individuals shall have the right to privacy consistent with applicable law, including HIPAA (Pub. L. No. 104-191, 110 Stat. 1936 (1996)), 42 CFR Part 2, and patient privacy requirements specific to the care of minors required by 18 V.S.A. §7103.

4.15.4.2 Individuals have the right to be informed of the limitations of privacy and confidentiality.

4.15.5 Access to Services

4.15.5.1 Individuals have the right to receive information about eligibility criteria, practitioner qualifications, practice guidelines, and available services and programs regardless of whether they are offered by the Agency.

4.15.5.2 Individuals have the right to receive treatment and services in the most integrated, least restrictive setting appropriate to their needs.

4.15.5.3 Individuals have the right to a comprehensive service plan that incorporates coordination with other relevant Agencies/systems if desired.

4.15.6 Personal Liberty and Autonomy

4.15.6.1 Individuals or their guardian have the right to name who their natural supports are, and to name those natural supports they do not want from participating in their supports.

4.15.6.2 Individuals or their guardian have the right to create Advanced Directive(s) and have support to create them, if desired.

4.15.6.3 Individuals or their guardian have the right to refuse or terminate services, providers, and/or medication, except where required by court order.

4.15.6.4 Individuals or their guardian have the right to voice complaints, grieve treatment and services, and/or appeal decisions made by an Agency without negative consequences.

4.15.6.5 Individuals or their guardian have the right to all legal protection and due process for status as an outpatient and inpatient individual, both voluntary and involuntary, as defined under Vermont law.

4.16 Accessibility

4.16.1 The Agency shall conduct its business and ensure service delivery in a way that complies with the Americans with Disabilities Act (ADA)

and meets the following requirements:

4.16.1.1.1 Accessible parking, entrances, private meeting space and bathrooms shall be available in each building that is open to the public and/or used for the provision of services. This does not apply to private homes or apartments.

4.16.1.2 The inclusion of transportation needs to access necessary supports and services must be included in the development of an individual's service plan.

4.16.1.3 Information and communication shall be provided to individuals and/or their authorized representatives in a format that is understandable to the individual applying for or accessing services.

4.16.1.4 Written policies and procedures shall be developed that provide for other accommodations, as needed, and as determined by the needs of the individual.

4.17 Continuity of Services Plan

4.17.1 Each Designated Agency shall have a written plan for continuity of care in the event of the Agency's voluntary or involuntary closure; a disaster; unanticipated service interruptions; relocation of an individual; or transfer of an individual to another provider. The plan shall account for:

4.17.1.1 Orderly and timely transfer of individuals to other service providers, or referral.

4.17.1.2 Notification to individuals, staff, and community partner organizations of any upcoming closure and transition plans for continuity of care.

4.17.1.3 Notification to the Department(s) no fewer than 90 days prior to closure to discuss the rationale for closure and plans for continuity of care.

4.17.1.4 Transfer of individual records to the appropriate service provider.

4.17.1.4.1 The Designated Agency shall provide all client records necessary to maintain continuity of care to the new provider within ten (10) calendar days of the request or the date of transfer to the new service provider, whichever occurs first.

4.17.1.5 Ensuring that individual records are secured and maintained in accordance with State and Federal regulations.

4.17.1.6 To the extent feasible, identify alternative locations and methods to sustain service delivery and access to medications during emergencies and disasters

4.17.1.7 At a minimum, the Designated Agency shall review its Continuity of Care Plan annually and update it if needed.

4.17.1.8 The Department(s) may request to review a Designated Agency's Continuity of Care Plan at any time.

4.18 Individual Records

4.18.1 The Agency will document services in compliance with federal and state guidelines and practice standards including the Mental Health Provider Manual and the Vermont Medicaid Manual for Developmental Disabilities Services.

4.18.2 Individual records shall reflect the delivery of clinical care, specifically that it is strengths-based, person-centered and family-centered (for youth, as appropriate), recovery-oriented, evidence-based, and trauma-informed.

4.18.3 Agencies shall have internal auditing practices in place for a rotating, representative subset of clinical records.

4.18.4 DAIL/DMH shall maintain file review criteria with agencies pertinent to the programs being monitored.

4.18.4.1 In accordance with the 21st Century Cures Act, individuals shall be given access to their health information in the electronic health record without charge, if requested.

4.19 Program Budget and Fiscal Policies

4.19.1 An Agency shall comply with the requirements of 18 V.S.A. § 8910.

4.19.2 The Agency shall have fiscal management practices that demonstrate the following:

4.19.2.1 Fiscal solvency, as demonstrated by the ability to meet payroll and pay bills in a timely fashion;

4.19.2.2 Medicaid certification;

4.19.2.3 A published fee schedule, for DDS services this requirement goes into effect July 1, 2025;

4.19.2.4 The Agency shall make every reasonable effort to collect all fees from individuals and third-party payors;

4.19.2.5 Reliable monitoring of billing and expenditures versus revenues by individual, by staff, by service, by program, and by service provider, in accordance with generally accepted accounting principles (GAAP);

4.19.2.6 Accounting practices in accordance with DMH/DAIL standards and procedures including, at a minimum, the composite balance sheet, and the composite statement and program statements of revenue and expense;

4.19.2.7 An annual financial and compliance audit performed by an independent public accountant in accordance with the department's Audit Guide and all applicable State and Federal laws, regulations, policies and procedures;

4.19.2.8 Adequate fire, personal, professional and general liability, board/officer insurance coverage within guidelines set by DMH/DAIL;

4.19.2.9 Efficient administrative practices, including, but not limited to, fiscal, policy, and procedures;

4.19.2.10 An Agency may receive funds from sources other than the DMH/DAIL to carry out its duties for the population(s) whom they are designated to serve by DMH/DAIL. Funds received from such sources shall be identified to DMH/DAIL; and

4.19.2.11 An Agency shall identify and report all related-party transactions within its organization to the Commissioner, including the nature of the relationship and transaction, and the dollar amounts involved.

4.19.3 Upon request and with seven (7) business days' notice, the Agency shall comply with the following records requirements:

4.19.3.1 Allow physical inspection or review of its books and records, including inspection and review of any and all financial reports and backup

4.19.3.2 Allow review of any and all information relating to executive compensation, employment contracts and salary, bonus, and benefits of any sort paid to the executives and officers of the Agency.

4.19.3.3 Provide anonymized information regarding the wages and benefits for other, non-executive, classes of employees and contractors.

4.19.3.4 Provide access to contracts with, and payments made to, contractors providing services on behalf of the Agency related to any contract or grant issued by the State.

4.20 Information Technology (IT) Policies

4.20.1 The Agency shall have a technological infrastructure that enables cost effective information collection, analysis, and telecommunication functions required to:

4.20.1.1 Protect confidentiality of individuals when data are transferred to the Department(s) and/or other entities in adherence with, as indicated:

4.20.1.1.1 the Health Insurance Portability and Accountability Act (HIPAA);

4.20.1.1.2 the Family Educational Rights and Privacy Act (FERPA)

4.20.1.1.3 42 CFR Part 2

4.20.1.2 Ensure that data is securely kept, in compliance with Agency of Human Services (AHS) policy[2]; and

4.20.1.3 Ensure cybersecurity through alignment with Agency of Digital Services (ADS) security standards. For more information, please visit: https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives

4.20.1.3.1 All staff who access individual records of the Agency's systems for storing and accessing records must receive cybersecurity training at onboarding and annual refresher training thereafter.

4.20.2 The Agency shall adopt a policy regarding the use of artificial intelligence (AI) that must include, at a minimum:

4.20.2.1 Voluntary, informed individual consent, including explicit consent for any recording or ambient listening;

4.20.2.2 Availability of a non-AI option without pressure or impact to services provided; and

4.20.2.3 Disclosure of the tool's functions, data practices, and any third-party involvement.

5.0 Specialized Service Agencies

5.1 Specialized service agencies may be local, regional, or statewide.

5.2 Responsibilities of the Specialized Service Agency will be determined by the Commissioner during the development of the Provider Agreement and shall include clearly delineated roles and responsibilities between the specialized service Agency and the Designated Agency in the relevant geographic area(s).

5.3 Specialized service agencies shall meet the same requirements as a Designated Agency, with the following exceptions:

5.3.1.1 Specialized service agencies shall not be responsible for assuring that a comprehensive and responsive array of services is available within the designated geographical region.

5.3.1.2 Specialized service agencies shall not be responsible for determining the service needs of the community for each population it serves or developing a plan to address the identified needs. They will be responsible, however, for working collaboratively with the Designated Agency in the development of the Local Community Services Plan.

5.3.1.3 Other requirements may be waived at the discretion of the Commissioner.

6.0 State Program Standing Committees

6.1 Standing Committees. here shall be a State Program Standing Committee (State Committee) for: 1) Adult Mental Health; 2) Child, Adolescent, and Family Mental Health; and 3) Developmental Disabilities services.

6.1.1 The Advisory Board created by 18 V.S.A. § 8733 shall be the State Committee for Developmental Disabilities services. The State

Committee shall comply with the requirements of that section.

6.1.2 The State Committee for Mental Health shall comply with the following requirements:

6.1.2.1 The State Committee(s) shall be comprised of between 10 and 15 members.

6.1.2.2 A majority of members shall be disclosed individuals with lived experience and/or family members of the disability group that they represent.

6.1.2.2.1 For the Adult Mental Health State Committee, this shall be current or former adult individuals with lived experience

6.1.2.2.2 For the Child, Adolescent, and Family Mental Health State Committee, this shall be either current or former youth individuals with lived experience, or family members of current or former youth individuals with lived experience

6.1.2.3 All members shall be appointed by the Governor or designee for terms of three years.

6.2 State Committee Duties and Responsibilities

State Committee functions shall include:

6.2.1.1 Assisting in the identification of candidates for the State Committee;

6.2.1.2 State Committee meeting planning and facilitation;

6.2.1.3 Providing recommendations to the Department(s) regarding agency initial and redesignation, which will include:

6.2.1.3.1 reviewing aggregated data and reports provided by the Department, and

6.2.1.3.2 meeting with representatives from the Agency

6.2.1.4 Ranking and recommending priority areas of focus for the statewide system of care, to be updated at least every three years. The committee will focus on these priority areas when planning agendas and engaging in work;

6.2.1.4.1 In addition to the formal recommendation process, the committee will discuss concerns about the system of care as they arise

6.2.1.4.2 As needed, the committee will formalize concerns

to share with Commissioner(s) as appropriate

6.2.1.5 Providing to the Department recommendations for candidates for classified leadership positions involved in the Agency Designation process; and

6.2.1.6 Evaluation of Quality: The Committees shall advise the Department on the quality and responsiveness of services offered statewide.

6.2.1.7 Department Policy: The Committees shall review and recommend new policy that pertains to or significantly influences services for the population they represent.

6.2.1.8 Grievances & Individual Service Appeals: The Committees shall review aggregate information on the grievances and individual service appeals at least annually.

7.0 Provisional Designation, De-Designation, and Cancellation of Contract

7.1 Provisional Designation

7.1.1 An Agency may be placed on provisional status at any time, following a determination by the Commissioner that the Agency has:

7.1.1.1 Failed to comply with this rule or other applicable regulations;

7.1.1.2 Knowingly disregarded or neglected policies and/or practices that could endanger the health or safety of individuals, their family members, employees, or the public;

7.1.1.3 Violated an individuals' human or civil rights;

7.1.1.4 Failed to implement one or more items on a Corrective Action Plan (or equivalent) as accepted by the Department(s).

7.1.1.5 Pattern of failed implementation decisions resulting from grievance and/or individual service appeals processes;

7.1.1.6 Engaged in severe fiscal irresponsibility; or

7.1.1.7 Falsified data/record keeping.

7.1.2 The notification of provisional status from the Commissioner to the Agency shall include:

7.1.2.1 The reasons for such action;

7.1.2.2 The conditions under which DMH/DAIL may continue to purchase services from the Agency while under provisional status; and

7.1.2.3 The requirements for a Plan of Corrective Action in order to be reconsidered for re-designation, including:

7.1.2.3.1 The specific areas needing correction

7.1.2.3.2 The timeframes within which the elements of the plan of correction will be addressed, not to exceed 180 days.

7.1.2.3.3 The criteria upon which the Plan of Corrective Action, and the subsequent report on implementation, will be evaluated for acceptability by the Commissioner

7.1.3 The notification of provisional status may serve as the notification of intent to de-designate an Agency or cancel a Specialized Service Agency contract.

7.1.4 The Commissioner may place an Agency on provisional status without intent to de- designate or cancel the specialized service contract.

7.1.5 Corrective Action Plan

7.1.5.1 If the Commissioner determines that an Agency fails to comply with this Rule, the Agency's service plan, or otherwise fails to satisfactorily meet the needs of individuals, the Commissioner shall provide a written notice to the Agency that outlines the deficiencies and the potential for termination of designated status.

7.1.5.1.1 The Agency shall submit a Plan of Corrective Action (Plan) to the Commissioner no later than thirty (30) days after receipt of the Commissioner's notification of provisional status.

7.1.5.1.2 If the Plan is deemed acceptable by the Commissioner, the Agency provisional status will be extended for the timeframe specified within the Plan.

7.1.5.1.3 If the Plan is deemed not acceptable by the

Commissioner, the Commissioner shall notify the Agency, in writing, of intent to proceed with de-designation or contract cancellation or the need for additional information. This extension for additional information will be no longer than 15 days.

7.1.5.2 If the Commissioner outlines deficiencies that assert that some or all the specified deficiencies directly jeopardize client safety and well-being, the Agency shall immediately act to correct any deficiency.

7.1.5.2.1 The Department and Agency shall meet within three (3) business days and develop a written corrective action plan addressing measures to prevent reoccurrence of the deficiency.

7.1.5.3 At the end of the specified timeframe, the Agency shall submit a report to the Commissioner documenting that the corrections were made in accordance with the Plan.

7.1.5.4 If the Corrective Actions are not acceptable by the Commissioner or if the Agency fails to take immediate remedial steps in the case of situations involving risks to patient safety, the Commissioner shall notify the Agency, in writing, of intent to proceed with de-designation or contract cancellation or continuation of provisional status.

7.1.5.5 Continuation of Provisional status may be granted for a period not to exceed 180 days and will only be granted in situations in which the Agency is making significant gains and is expected to meet or exceed all requirements within the additional timeframe granted.

7.1.6 While an Agency is under provisional status for a specific population, DMH/DAIL may:

7.1.6.1 Suspend or amend terms of the annual contract or other service agreements between DMH/DAIL and the Agency, as allowed by contract.

7.1.6.2 Contract with other agencies to ensure uninterrupted service provision and quality.

7.1.6.3 Initiate the process to identify a new Designated Agency for that geographic area.

7.1.6.4 Take additional actions, as determined necessary by the Commissioner, to protect the well-being of individuals.

7.2 De-Designation and Cancellation of Specialized Service Agency Contract

7.2.1 The Commissioner may initiate the process of Agency De-designation (for a Designated Agency) or contract cancellation (for a Specialized Service Agency) if:

7.2.1.1 The Agency has been placed on provisional status and has exhibited the unwillingness or inability to improve performance as specified in the Plan of Corrective Action and within the timeframes established by DMH/DAIL; or

7.2.1.2 The Commissioner determines an Agency meets one or more of the criteria identified in Section 7.1.1.

7.2.2 The date for de-designation or contract cancellation shall be determined by the Commissioner and shall be dependent on the actions necessary to ensure that individuals within the geographic area of the Agency continue to receive the supports and services that they need.

7.2.3 The Agency to be de-designated or have its contract cancelled shall be notified in writing of:

7.2.3.1 The effective date for de-designation or contract cancellation;

7.2.3.2 The circumstances by which DMH/DAIL will continue to purchase services through the Agency until de-designation or contract cancellation is effective; and

7.2.3.3 The actions DMH/DAIL will undertake to replace the Agency's functions and ensure high-quality service provision to persons living in the geographical area.

7.2.4 The Agency to be de-designated or have its contract cancelled shall inform its current individuals of the change in the Agency's status, and provide them with information about future arrangements, as agreed upon with the Department(s)

7.2.5 At any time during the de-designation process for a specific population, DMH/DAIL may:

7.2.5.1.1 Suspend or amend terms of the annual contract or other service agreements between DMH/DAIL and the Agency, as allowed by contract.

7.2.5.1.2 Take additional actions, as determined necessary by the Commissioner, to protect the well-being of service individuals.

8.0 Appeals

8.1 A Designated Agency that has been notified by the Commissioner of the intent to proceed with de-designation, or to not grant initial designation status, shall have the right to appeal the decision.

8.2 Any specialized service agency that has been notified by the Commissioner of the intent to cancel or not renew its contract, or substantially modify its role and responsibilities, shall have the right to appeal the decision.

8.3 Notice of Appeal. A written Notice of Appeal, stating the grounds for such appeal, shall be filed with the Commissioner within 10 days following the Agency's receipt of notification from the Commissioner of the intent to de-designate the Agency, cancel or not renew Agency contracts or not to designate the Agency initially. Agencies do not have the right to appeal decisions related to placement on provisional status.

8.4 Notice of hearing. As soon as practicable, a date certain shall be set for the appeal hearing, with notice to all parties. Within forty-five (45) days of the filing of the Notice of Appeal, a hearing shall be conducted by the Commissioner or their designee (hereafter "Commissioner"). The purpose of the hearing shall be to ensure that the Commissioner has considered all pertinent information available prior to making a final decision regarding the Agency's status.

8.5 Disclosure of Information. Upon request of any party related to the appeal, the Department shall promptly provide the party with all public documents and records it relied upon in reaching its decision.

8.6 Conduct of hearing. At the hearing, the parties may present evidence and witnesses and be represented by counsel. The record of the hearing shall include a recording of the hearing, records relied upon, and any other information deemed by the Commissioner to be necessary for the proceeding. DMH and/or DAIL shall retain this record per the State of Vermont Record Retention schedule. The proceedings shall be open to the public. When public access threatens confidentiality rights, any party to the proceeding may seek appropriate measures to protect confidentiality, and the Commissioner shall take necessary steps to protect confidentiality.

8.7 Notice of decision. The Commissioner shall issue a final written decision within thirty (30) days of the hearing based upon the evidence presented orally and in writing. The decision shall be sent to all parties.

8.8 If any of the parties wish to appeal the decision of the Commissioner, they may submit an appeal, in writing, to the Secretary of the Agency of Human Services within ten (10) days of receipt of the Commissioner's decision. The Secretary of the Agency of Human Services shall base their review on the record presented to the Commissioner.

8.9 The Secretary of the Agency of Human Services shall issue a written decision within 30 days. The decision of the Secretary of the Agency of Human Services

will be the final action of the Agency. If further review is available to an aggrieved party, it shall be brought in the court authorized to review civil matters within 10 days of receipt of the final Agency of Human Services action and shall be based upon the record established at the hearing before the Commissioner and the decision of the Secretary of the Agency of Human Services

9.0 Investigations and Enforcement

9.1 The Departments will routinely review agency operations and services offered or supported by the Designated or Specialized Service Agency to ensure that they are operated in compliance with relevant department rules, regulations, contract/grant requirements, division mission, and the local service plan. These reviews may include site visits and may or may not be announced in advance.

9.1.1 A review includes, but is not limited to, a review of clinical records, the review of individual client care, interviews of care providers and their supervisors, a review of the results of internal quality assurance activities, and a review of the results of internal critical incident investigations, provided however, that nothing contained in the review shall require the Agency to provide the Department with information protected by the Attorney-Client Privilege or derived from peer review committee meetings as described in 26 V.S.A. § 1441 et seq.

9.2 The Departments may additionally investigate of actions of an Agency in response to concerns or feedback or as a result of information received from other sources. Such investigations shall include direct communication and deliberation with the entity filing the concerns or feedback or providing the information to ensure that the Department has accurate and complete information. Agency reviews may or may not be announced in advance.

9.3 The Agency must require its employees, contractors, and providers to furnish, upon reasonable request, to the Agency of Human Services, Department of Disabilities, Aging and Independent Living, Department of Mental Health, Department of Vermont Health Access, the Office of the Attorney General, Medicaid Fraud Unit, and the Federal Department of Health and Human Services, any record, document, or other information for health oversight activities; a review, audit, or investigation of fraud, abuse; or other violation of law. Upon request of an entity identified in this paragraph, The Agency must provide, on a reasonable basis and free of charge, both inspection of original or copied documents held by the Agency or any of its employees, contractors, and providers to the requester or to a HIPAA health oversight agency identified by and contracted with the Department.

9.4 The Agency shall establish procedures by which it will report all suspected Medicaid fraud or abuse, or other violations of law to AHS, the Department of Vermont Health Access, and the Office of the Attorney General.

9.5 Findings of these reviews will be considered in the re-designation and contract renewal process.

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SECRETARY

STATE OF VERMONT
AGENCY OF HUMAN SERVICES

MEMORANDUM

TO: Legislative Committee on Administrative Rules (LCAR)

FROM: Ashley L. Johns, General Counsel, Agency of Human Services

DATE: July 27, 2026

SUBJECT: Final Proposed Rule 26P-012: Rule on Agency Designation

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The Agency of Human Services is submitting the Rule on Agency Designation for this Committee's consideration.

There have been changes to the rule since the rule was initially reviewed by the Interagency Committee on Administrative Rules. Many of the changes were made based upon public comments received. These modifications and clarifications are outlined in the attached "Summary of Public Comments."

In addition to the changes outlined in that summary, minor clerical changes have been made to the rule, including re-numbering the index to align with the current state of the document; ensuring that references to designated agencies, specialized service agencies, and both were appropriately referenced throughout; and correcting minor typographical, grammatical, and alignment errors.

Summary of Public Comments – Designated Agency Rule

1. Language Modification Recommendations

A. Commenter recommended modifying the language in section 2.2 to read as follows: "AHS will review this rule annually and update its content, as deemed necessary by AHS, to support a stable community-based system of care, promote alignment with nationally recognized best practices, state initiatives advancing quality and equity in care delivery, and all applicable state and federal laws."

State Response: AHS declines to make this modification. While a stable community-based system of care is an overarching goal for Vermont, the rules reflect the specific requirements for providing care within that system. The rules do not include all factors relevant to a stable system of care, for example funding for DAs/SSAs.

B. Commenter identified the language in section 3.7 as too restrictive and recommended the section be modified to read as follows: ""Complaint" means the same as "Grievance" below, with the exception that it can be resolved ~~in one interaction~~ within ten (10) business days of ~~with~~ the initial staff and/or a supervisor receiving notice of the issue."

State Response: AHS declines to make this modification. Circumstances that do not meet the definition of "complaint" fall into the category of "grievance." Any new language added to this agreement is not impacted by whether an incident is categorized as a complaint or grievance.

C. Commenter recommended eliminating the language in section 4.3.3.2 "~~The inability of a Designated Agency to meet the needs of an individual shall not be factored into any decision by the Designated Agency to refuse to serve the individual~~", stating that it was duplicative as being addressed in both sections 4.3 and 4.4.

State Response: AHS declines to make this modification. The language proposed for deletion was not newly added to the rules and outlines a clear requirement. While new language was added to section 4.3 which includes details about *how* a DA will provide for an individual with extraordinary needs, the statement that these needs may not be factored into the baseline decision to serve the individual is not duplicative to the detail outlined thereafter.

D. Commenter recommended section 4.12 reference "community service plans" or "community needs assessments" to address agencies that are CCBHCs.

State Response: AHS declines to make this modification. This rule outlines the minimum standards for statutory designation; the rule does not include the requirements for an agency, otherwise designated as a DA or SSA, to become a Certified Community Behavioral Health Clinic (CCBHC). Where state or federal requirements or expectations for a CCBHC diverge from this rule, the more stringent requirement always takes priority.

E. Commenter recommended modifying section 4.3.4.4 to include language from the FY26 Provider Agreement, to read as follows: "4.3.4.4. If, within ten (10) business days of the initial request, the meeting has not occurred, has not been scheduled by Agreement, or in the reasonable faith efforts do not result in resolution, either party may request that the dispute be submitted to an independent mediator, who shall be chosen by agreement of the parties and shall cooperate in good faith to participate in and complete the mediation within sixty (60) days of the request for mediation. The parties will agree to the terms and conditions of the mediation in consultation with the mediator. Either party may be represented or assisted in the mediation by legal counsel at such party's own expense. If the parties do not come to an agreement within sixty (60) days of the request for mediation, the parties may pursue any available legal remedies, unless the parties agree in writing to extend the time for mediation.

State Response: AHS agrees, in part, to modify the language in this section. As this is an administrative rule, the reference to legal remedies is not appropriate in this context (though, it was appropriate in the context of a contract like the Provider Agreement). The administrative rule does not limit any available legal remedies once the administrative process is followed. AHS agrees that it makes sense to include language about deadline extension by agreement to ensure no one feels limited by the inclusion of a timeline for resolution and has modified the language to address the same. The following was added to Section 4.4.4.4 "The parties may extend the mediation beyond sixty (60) days by written agreement."

F. Commenter recommended modifying section 4.3.5 to eliminate the reduction of expenditures language because agencies do not have the option to increase revenue through this process, and recommended the section read as follows: "If DA revenues arising out of their Provider Agreement decrease or if the costs of operations necessary to the performance of their Provider Agreement increase due to circumstances beyond the DA's reasonable control, then DA shall have the right to request from the Department a planned reduction of ~~expenditures or~~ services that are required to be provided."

State Response: AHS declines to make this modification. This section mirrors the language from the FY26 Provider Agreement. If a plan is necessary to resolve a financial crisis, both the reduction of services *and* expenditures must be considered. AHS is not willing to consider only eliminating services from Vermonters when it is possible that a reduction in expenditures would permit the continuation of the provision of services.

G. Commenter recommended modifying section 4.3.7.1 to read as follows: If the State of Vermont's funding and administrative policies and regulations are modified during the term of an Agreement, the Department shall provide reasonable advance notice ~~notify the DA~~ of such change to the Agency in writing, via email, and the Agency shall have a reasonable period of time to implement any required changes, not to exceed 90 calendar days, unless a shorter period is required by law or a longer period of time is agreed to by the parties. If a shorter period is required by law, the Department will provide notice to the Agency of the change as well as the implementation date as soon as practicable. At least 30 days prior to implementation, the Department will finalize all changes to the policies and

regulations and provide prior written notice of the intent to finalize the policy, including any effective dates or implementation dates.

State Response: AHS declines to make the requested modification, however, has made minor modifications for clarity. This administrative rule reflects the specific requirements for non-profit agencies statutorily designated under this rule for providing care to Vermonters, it does not outline requirements for AHS or its departments. Including a requirement that a department finalize all internal changes that are relevant to potentially external (federal) changes to programming unnecessarily risks federal compliance. The current language permits a "reasonable period" for implementation and includes notification, compliance with law, and agreement to extend implementation where appropriate. This language allows the period of implementation to match the circumstances. To the extent that this commenter identified a need to correct clerical errors, those are outlined in section 4, below, and accepted. The section now reads as follows: "If the State of Vermont's funding and administrative policies and regulations are modified, Agency shall receive written notice from the State and have a reasonable period of time to implement any required changes, not to exceed 90-calendar days, unless a shorter period of time is required by law or a longer period of time is agreed to by the parties."

H. Commenter recommended modifying section 4.7.1.10 to alter the requirement that Boards approve agency policies, limiting the Boards overview to only policies related to governance, ethics and financial management. Commenter recommended the section read as follows: "Recommend or approve new Agency policies relating to governance, ethics, and financial management~~y~~, and significant ~~policy~~ updates to those policies. The Board, at its discretion, may periodically request to review any~~all~~ other policies and procedures."

State Response: AHS declines to make this modification. This language in the rule is neither new nor modified language. DAs and SSAs are non-profit agencies statutorily designated to provide care for Vermonters. They are issued government contracts and grants based upon that designation. It is expected that the Board of those non-profits who sought and were granted designation will be aware of and approve new policies and significant updates to existing policies.

I. Commenter recommended that the definition of "Board Documents" in section 4.7.3.2 be clarified to exclude minutes of executive session. Commenter recommended including the following language: "If the Board determines the need to convene an executive session and that executive session is convened to discuss contracts or confidential attorney-client communications made for the purpose of providing professional legal services to the Agency, the Board may, in its discretion, decline to provide minutes of such executive session to the State."

State Response: AHS declines to make this modification. Attorney-client communications are already exempt from disclosure.

J. Commenter recommended eliminating section 4.7.2.1.5 which outlines the minimum requirements for Board bylaws. Commenter cites the following in support of this recommendation: 11B V.S.A. §8.30 nonprofit requirements and state control

of corporate governance. Commenter also questions the authority to adopt this portion of the rule and cites an economic impact based on the training requirement.

State Response: AHS declines to make this modification. This language closely mirrors the language of the FY26 Provider Agreement and was moved almost verbatim into the Administrative Rule from that agreement that was signed less than a year ago. The DAs and SSAs are non-profit agencies statutorily designated to provide care for Vermonters. They are issued significant sole-source government contracts and grants based upon that designation. As the contracts are sole source due to this statutory designation, there is no competition for the funds, which increases the need for state oversight to ensure appropriate and transparent use of Vermont's funds. As such, the State has a significant interest in ensuring that there are minimums met by the Boards overseeing these non-profit agencies to ensure fiscal responsibility. The State is not dictating the extent of the Board bylaws, rather, including minimum requirements by-laws must meet. The Board by-law must require, at a minimum:

(1) Representation from individuals with appropriate legal and financial expertise
(2) Prohibition on Agency employees serving on the Board
(3) Replacing board vacancies within 120 days
(4) Requiring Board members to receive corporate governance training
(5) At least quarterly the Board must review financial statements
(6) At least annually the Board will review and approve salary, benefit, and compensation for personnel annually earning $150,000 or more

As it relates to the potential economic impact of corporate governance training—moving a long-standing requirement from contract to rule does not demonstrate an economic impact. The cost of corporate governance training for Board members has been a long-term ongoing requirement that accompanies designated status for the non-profit.

K. Commenter raised concerns regarding the role of Agencies in the fair hearing process, specifically proposing modification in two sections: 4.10.1.3-- "If a client of the Agency files an appeal with the Department or requests a fair hearing, the Agency must promptly provide all requested clinical records and other necessary documentation to the Department and to the client."4.10.1.4 – "When a client files a request for a fair hearing, the Department shall notify the Agency, and the Agency shall ~~file a notice of appearance and~~, if requested by either party or the hearing officer, shall attend the hearing and testify."

State Response: AHS agrees with this recommendation, in part, and did not intend to make the agencies parties to fair hearing proceedings. AHS will modify the language in section 4.10.1.4, as outlined above (omitting the duplicative "shall"), to address this error. However, AHS does not believe it would be appropriate to modify 4.10.1.3 to require the DA/SSA to provide documentation to client when requested by the Department The client has a variety of way to access their documentation, if they desire to do so.

L. Commenter noted that adverse decision making has changed for HCBS and CMOs upload certain DS records. Based on the foregoing, Commenter recommended modifying section 4.10.1.5 as follows: "Agency shall be held solely liable for any final adverse decision for the client, made by ~~of~~ the hearing officer if it is determined by the Department that the adverse decision was the result of a lack of critical information requested by the Department that was not provided by the Agency any if provided, may have reasonably resulted in a final decision that was not adverse.

State Response: AHS included a portion of this modification for clarity. The language moved to rule is almost a verbatim recitation of the Provider Agreement language from FY26. Conflict free case management has no impact on this requirement. The whole of the requested modification substantially alters the meaning of this paragraph. The DA/SSA is statutorily designated to provide services to Vermonters and in that capacity, that Agency may hold information required to determine the outcome of a Human Services Board Appeal. In that circumstance, if the Agency fails to provide that information to AHS and there is an adverse decision based on the lack of information, the burden of that adverse decision must fall to the statutorily designated DA/SSA. However, it should be clear that the missing information must be requested by the Department. The section now reads as follows: "The Agency shall be held solely liable for any final adverse decision of the hearing officer if it is determined by the Department that the adverse decision was the result of a lack of critical information requested by the Department that was not provided by the Agency."

M. Commenter recommended editing section 4.11.2 to read as follows: "The Agency shall provide treatment and health care data directly to the Vermont Health Information Exchange (VHIE) and shall follow agreed upon directives of ~~from~~ any applicable regulations or agreements, related to its data sharing requirements.

State Response: AHS declines to make the requested modifications as some of the language invites confusion. For example, as written the requirement would include "agreed upon agreements" and appears to imply that state or federal regulations must be agreed upon before adherence would be required. However, AHS has altered this sentence for clarity to read as follows: "The Agency shall provide data directly to the Vermont Health Information Exchange (VHIE) and shall follow directives of all applicable state or federal regulations or agreements.

N. Commenter recommended editing section 4.17.1.4.1 to include reference to HIPAA and 42 CFR Part 2 because client record transfer is a TPO disclosure. Commenter also questioned whether this regulation is applicable to DSO transfers which were recently identified in a workflow between DS directors and CMOs as being completed in thirty (30) days. Commenter recommended the language be modified to read as follows: "The Designated Agency shall provide all ~~the~~ client records necessary, and in accordance with and permitted by HIPAA and 42CFRPart 2, to maintain continuity of care to the new provider within ten (10) calendar days of the request or the date of transfer to the new provider, whichever occurs first.

State Response: AHS declines to make this modification. The language moved to rule is almost a verbatim recitation of the Provider Agreement language from FY26. This requirement is in place to ensure continuity of care for Vermonters being provided services by a statutorily designated DA or SSA and transferred to another provider (often another DA or SSA). There is no need to reference HIPAA or 42 CFR Part 2 in the Administrative Rule—those are overarching federal compliance requirements. There is also no reason to modify the ten (10) day transfer requirement outlined in FY26 to thirty (30) days. However, to ensure clarity, the word "service" has been added before "provider."

O. Commenter recommended modifying 4.19.3 to require written notice and seven (7) business days to comply with the record requirements outlined in section 4.19.3. Commenter noted that this was consistent with the FY26 Provider Agreement.

State Response: AHS agrees to make this modification to align the language more closely with the language moved from the FY26 Provider Agreement. The phrase, "and with seven (7) business days' notice" was added to section 4.19.3.

P. Commenter recommended modifying the language in section 4.19.3.4 to limit the State's access to information about only those contracts / contractors identified in the Provider Agreements. Commenter recommended the section be modified as follows: "Provide access to contracts with, and payments made to, contractors providing services on behalf of the Agency, which are covered by the Provider Agreement.

State Response: AHS added alternative language to this section to address the comment and ensure necessary access to information. There are many circumstances in which contracts could impact the capacity and/or financial status of a DA/SSA. As the statutorily designated non-profit providing care for Vermonters, AHS has a significant interest in ensuring the required (contract and grant) services are provided by the DAs/SSAs. The review of contracts for services being provided in relation to any contract or grant issued by the State is necessary, as is the ability to review financial compensation to contractors. AHS modified sections 4.19.3.3 and 4.19.3.4 to read as follows: "Provide anonymized information regarding the wages and benefits of other non-executive classes of employees and contractors." "Provide access to contracts with and payment made to, contractors providing services on behalf of the Agency related to any contract or grant issued by the State."

Q. Commenter recommended modifying section 9.3 for clarity—specifically adding the phrase "any of" to clarify that the agency need only respond to the requesting entity. Commenter also suggested there be a reference to confidentiality. Commenter recommended the section be modified to read as follows: "The Agency must require its employees, contractors, and providers to furnish, upon reasonable request, to any of the Agency of Human Services, Department of Aging and Independent Living, Department of Mental Health, Department of Vermont Health Access, the Office of the Attorney General, Medicaid Fraud Unit, and the Federal Department of Health and Human Services, any record, document, or other information for health oversight activities; a review, audit, or investigation of fraud, abuse; or other violation of law. Upon request of an entity identified in this paragraph, the Agency must provide, on a reasonable basis and free of charge, both inspection of original or copied documents held by the Agency or any of its employees, contractors, and providers to the requester or to a HIPAA health oversight agency identified by and contracted with the Department."

State Response: AHS declines to make this modification. The addition of the phrase "any of" does not appear to provide any additional clarity as the phrase "upon reasonable request" already addresses the need to provide the relevant information to the requesting entity. The identification of overarching confidentiality requirements is not necessary in Rule as these requirements apply to all activities that fall within the scope of HIPAA. Calling out specific areas of rule mentioning confidentiality or HIPAA undermines the concept that compliance with state and federal confidentiality requirements is always applicable, not just as referenced in a specific section of Rule.

R. Commenter recommended that section 9.4 be modified to require agencies to only report suspected fraud, abuse, or other violations of law to only one entity as duplication is burdensome. Commenter recommends the section be modified to read as follows: "The Agency shall establish procedures by which it will report all suspected fraud, abuse, or other violations of law to AHS~~, the Department, the Department of Vermont Health Access, and the Office of the Attorney General~~. Agencies understand that AHS may be obligated share reports of suspected fraud, abuse, or other violations of law, on a confidential basis, with the Departments and the Attorney General."

State Response: AHS declines to make this modification; however, the comment appears to identify a source of ambiguity in this section. AHS rephrased the paragraph as follows: "The Agency shall establish procedures by which it will report all suspected Medicaid fraud or abuse, or other violations of law to AHS, the Department of Vermont Health Access, and the Office of the Attorney General."

2. Recommended Additions

A. Commenter recommend expanding the role of the State Standing Committee to include participation in hiring decisions within the Department of Mental Health.

State Response: AHS declines to further expand the committee's involvement in hiring decisions. The State Program Standing Committees are outlined in section 6.0. There were no changes made to this section of the rule. The State Committee for Mental Health functions are outlined in section 6.2 and include "[p]roviding the Department recommendations for candidates for classified leadership positions involved in the Agency Designation process.

B. Commenter recommended, and others concurred with, the inclusion of an AI policy and recommended requiring written policies and procedures that include:
   - Voluntary, informed individual consent, including explicit consent for any recording or ambient listening.
   - Availability of a non-AI option without pressure or impact to services.
   - Disclosure of the tool's functions, data practices, and third-party involvement before use.

   Another commenter expressed concern with the "disclosure" bullet point, noting that the requirement may be addressed in current posting requirements, and recommended, in the alternative, that the Agency be required to verify the tool's functions, data practices, and third-party involvement comply with state and federal regulations.

State Response: AHS agrees with the recommendation to add language requiring an AI policy and included the three recommended bullet points as the minimum standard for that policy in Section 4.20.2. However, the Agency may adopt a policy that meets their specific needs. As the Agency is required to comply with state and federal regulations, it would be expected that the Agency would verify any AI tool in use is compliant, so restating that in rule seems unnecessary. The disclosure requirement was included to ensure an individual making a decision would have this information. If there are already postings that disclose

these elements— a policy could point the individual to already existing materials to meet the disclosure requirement.

C. Commenter recommended including a requirement for cybersecurity training to section 4.19.1.3 which requires alignment with the Agency of Digital Services (ADS) cybersecurity standards (ADS Cybersecurity Standards: https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives, specifically: "All staff who access individual records or the agency's systems for storing and accessing records must receive cybersecurity training at onboarding and annual refresher training thereafter." AHS also received a comment that cyber security training is already required for HIPAA compliance and that this addition would be duplicative. Commenter recommended considering whether the rule should state that agencies must be HIPAA compliant.

State Response: AHS agrees with the recommendation to add language outlining the cybersecurity training requirement at onboarding and annually thereafter. The language was added to section 4.20.1.3.1: "All staff who access individual records or the agency's systems for storing and accessing records must receive cybersecurity training at onboarding and annual refresher training thereafter." As the comments indicate the DAs/SSAs believe this is already a requirement for HIPAA compliance, there will be no financial impact to explicitly include this requirement in the rule.

D. Commenter recommended adding a new section to read as follows: "If the State of Vermont is mandating or implementing a new program during the term of the Agreement, and said initiative requires financial resources to implement, the State will provide a specific cost-related appropriation. If that does not occur, the Agency shall have the choice as to whether to comply with the ask and implement the program."

State Response: AHS declines to add this language. The administrative rule outlines the requirements of the DA/SSA in providing services to Vermonters. The Provider Agreement should not be referenced in rule, as such, there is no "term" relevant to the applicability of an administrative rule. Further, appropriations and budget requests are not appropriate for inclusion in an administrative rule. If there is a new program mandate (which could come from the federal government)—an Agency cannot unilaterally decide whether to comply with that mandate. Funding is addressed through contract and grant provisions related to that new program.

E. Commenter recommended adding a new section to read as follows: "Certain Agency documents and policies may be exempt from public inspection and copying pursuant to 1 V.S.A. § 317(c). Such documents and policies will continue to be exempt even if provided to the Department in accordance with this Rule."

State Response: AHS declines to add this language. Recitation of statute is not an appropriate use of administrative rule. Whether documents are exempt from public record disclosure is a determination made pursuant to 1 V.S.A. § 317(c) at the time a public record request is received. This analysis occurs regardless of the original source of the material.

3. General Questions / Concerns

A. Commenter recommended the State modify the rule to identify which sections are applicable to designated agencies (DAs) and specialized service agencies (SSAs). Commenter also noted that some SSAs are not DS focused. Finally, commenter suggested adding language about agencies that are both CCBHCs and DAs.

State Response: AHS declines to make modifications based on this comment. First, the rule already specifies certain activities to "designated agencies" or "specialized service agencies" throughout. Additionally, this rule outlines the minimum standards for statutory designation; the rule does not include the requirements for an agency, otherwise designated as a DA or SSA, to become a Certified Community Behavioral Health Clinic (CCBHC). Where state or federal requirements or expectations for a CCBHC diverge from this rule, the more stringent requirement always takes priority.

B. Commenter identified a risk, albeit low, that the definition of "family member" in section 3.13 could include a discharged SLP who still cares about the person.

State Response: AHS believes that this is envisioned in this rule. Section 4.15.6.1. gives individuals the right to include/exclude anyone from being considered a "natural support". If an individual initially indicates that a former Shared Living Provider should be deemed a "family member", as defined in Section 3.13, but then changes their mind, the individual can exercise their rights in Section 4.15.6.1.

C. Commenter noted that the Vermont Department of Health is not included in the definition of "Provider Agreement" in section 3.20.

State Response: AHS agrees that VDH should be included in the definition of Provider Agreement. The "Provider Agreement" definition will be amended to include the Vermont Department of Health. "Provider Agreement" means the service contract signed by the Agency and the Department of Disabilities, Aging and Independent Living, the Department of Mental Health, or the Vermont Department of Health.

D. Commenter noted that section 4.4 is not applicable to all agencies, as it relates only to services provided for children and recommended the State modify the language to address that complexity.

State Response: AHS declines to modify this section. This section outlines the federal requirement for EPSTD services.

E. Commenter recommended the State modify the language in section 4.4.2 to align with COI changes in roles and responsibilities.

State Response: AHS declines to make any modifications based on this comment. Although they are not necessarily responsible for providing each of these specific services, Designated Agencies are required, across their service area, to ensure that intake, evaluation, determination of medical necessity and provision of services occur. This is true for all services that the agency provides: mental health supports, developmental disability services and substance use disorder services. "COI" and a centralized intake/eligibility

approach is exclusive to Developmental Disabilities Services; however, agencies are still obligated to ensure that individuals in their service delivery area are connected to these resources.

F. Commenter requested the State consider funding the culturally and linguistically appropriate services required by section 4.6 either through funding to the agencies or reliable on-demand translation services available to the agencies

State Response: AHS declines to make any modifications based on this comment. Administrative rules do not establish funding.

G. Commenter noted that in sections 4.8.2.4 and 4.8.3.1.4 there is reference to "Community Services Plan" which is applicable only to agencies serving the Department of Disabilities, Aging, and Independent Living (DAIL) and other departments require "Community Needs Assessments."

State Response: AHS altered the language is this section based on this comment. Currently, DMH allows an agency to submit either a community services plan or a community needs assessment, so the new reference aligns with current practice.

H. Commenter inquired what "prevention and mitigation" refers to in section 4.9.1.2.2.

State Response: In section 4.9.1.2.2, "prevention and mitigation" reference trauma informed supports for therapeutic intervention in public safety (including when individuals are under the Commissioner's custody) and other clinical support to prevent offending, violence against others, property damage, and/or self-injurious behaviors."

4. Typographical Errors, Terminology Clarification, & Internal Citations

The following typographical errors, terminology clarification requests, and internal citation errors were identified in comments received. AHS agrees to remedy all the identified typographical errors, language clarification requests, and internal citation errors.

A. The phrase "catchment area" should be modified to "service area" throughout the rule. [This change was made to modify the definition section to reference both catchment and service area to allow time for internal documents to catch up with this change in language, and all references in rule are to "service area".].
B. Section 4.3.4.1 requires the addition of the word "by" for clarity.
C. Section 4.3.7.1 requires the word "any" be substituted for "ay" and "Agency" should be substituted for "DA" throughout.
D. Section 4.4.2 requires modification from the word "serves" to "services" for clarity.
E. The term "client" should be replaced with "individual" throughout the rule.
F. Section 4.8.2.3 includes an inaccurate internal reference to section 4.7.2.1 which should be modified to reference 4.8.2.1.
G. Section 4.13.2.1.7 includes an inaccurate internal reference to section 4.16 which should be modified to reference 4.17.

Vermont Care Partners (VCP) appreciates the opportunity to provide comments on the proposed Rule on Agency Designation. The VCP network supports the intent of the rule to promote a stable, high-quality, community-based system of care and recognizes the importance of clear expectations for Designated Agencies (DAs) and Specialized Service Agencies (SSAs). However, throughout our review, we identified several areas that would benefit from clarification, consistency, and alignment with existing practice and statutory authority. In particular, there are multiple sections where it is unclear whether provisions apply to DAs, SSAs, or both as well as inconsistencies in terminology for the agencies and for people being supported by the agencies (e.g., "individual," "person," "client," and "beneficiary"). We attempted to make the proposed edits and comments as clear as possible and welcome the opportunity to work collaboratively with AHS to refine the rule language to ensure accuracy, clarity, and effective implementation.

For further information or discussion: Please contact Simone Rueschemeyer, VCP Executive Director

Below are some sections for additional review and clarification:

2.1: This rule establishes the requirements for the designation of nonprofit agencies ("Designated Agencies") by the Agency of Human Services (AHS) to provide community mental health and intellectual/developmental disability services within distinct geographic areas of Vermont. Additionally, this rule establishes the responsibilities of "Specialized Service Agencies" as assigned by AHS to provide either community mental health or intellectual/developmental disability services within the State.
VCP Comment: As stated above, we need clarity on which section is for DAs, SSAs, all agencies and take into consideration that not all SSAs are DS focused, and not all DAs are comprehensive agencies. Also, is this rule also going to include aspects of CCBHC? If so, we should walk through the entire document to align with CCBHC and if DSU is part of this, with Preferred Provider status and ensure that the rule does not conflict with CCBHC and/or PP certification. If CCBHC is added, the CCBHC reassessment will be done on a rebasing schedule. How does it align with designation? We might want to add language that states for agencies that are both a CCBHC and a DA, the following are for services outside of the CCBHC model - a statement at large in the very beginning.

2.2: AHS will review this rule annually and update its content, as deemed necessary by AHS, to support a stable community-based system of care, promote alignment with nationally recognized best practices, state initiatives advancing quality and equity in care delivery, and all applicable state and federal laws.
VCP Comment: It is important to include the overall goal.

3.4: "Catchment Area" means a Designated Agency's geographic service area, as determined by the Commissioner of DMH and/or the Commissioner of DAIL.
VCP Comment: In the Provider Agreement, the terminology has changed to Service Area.

3.7: "Complaint" means the same as "Grievance" below, with the exception that it can be resolved ~~in one interaction~~ within ten (10) business days ~~with~~ of the initial staff and/or a supervisor receiving notice of the issue ~~and/or a supervisor~~.
VCP Comment: As it reads, this is too restrictive. It effectively defines all but the most transient complaint a grievance. This language is not in line with intent, and a tremendous administrative burden.

3.13: "Family member" means an individual who is related to a person with a disability by blood, marriage, civil union, or adoption, or considers themself to be family based upon bonds of affection, and who currently shares a household with the individual with a disability or has, in the past, shared a household with that individual. For the purposes of this definition the phase, "bonds of affection" means enduring ties that do not depend on the existence of an economic relationship. See the section on Individual Rights for limitations on family member participation.
VCP Comment: A discharged SLP who still cares about the person could define themselves as family member based on this definition. Low risk, but it exists.

3.20: "Provider Agreement" means the service contract signed by the Agency and either the Department of Disabilities, Aging and Independent Living, or the Department of Mental Health.
VCP Comment: VDH has been part of the Provider Agreements [redacted]. It should be consistent.

4.3.3.2: The inability of a Designated Agency to meet the needs of an individual shall not factor in a decision by the Designated Agency to refuse to serve the individual.
VCP Comment: This is duplicative. It is addressed in 4.3 and 4.4 and should be removed. We are ok with keeping the sentence referencing the lack of stable housing.

4.3.4.1: Upon DA request, the Department Commissioner (or designee) and the DA shall meet within five (5) business days to discuss feasibility, risk, and funding including whether services should be provided by another DA, a specialized service agency (SSA), or another contractor.
VCP Comment: the word "by" is missing.

4.3.4.4. If, within ten (10) business days of the initial request, the meeting has not occurred, has not been scheduled by Agreement, or in the reasonable faith efforts do not result in resolution, either party may request that the dispute be submitted to an independent mediator, who shall be chosen by agreement of the parties and shall cooperate in good faith to participate in and complete the mediation within sixty (60) days of the request for mediation. The parties will agree to the terms and conditions of the mediation in consultation with the mediator. Either party may be represented or assisted in the mediation by legal counsel at such party's own expense. "If the parties do not come to an agreement within sixty (60) days of the request for mediation, the parties may pursue any available legal remedies, unless the parties agree in writing to extend the time for mediation."
VCP Comment: The language in red was agreed to last year in the PA and should be carried over

into the Rule.

4.3.5: ~~.~~If DA revenues arising out of their Provider Agreement decrease or if the costs of operations necessary to the performance of their Provider Agreement increase due to circumstances beyond the DA's reasonable control, then DA shall have the right to request from the Department a planned reduction of ~~expenditures or~~ services that ~~it is~~are required to be provided~~. under the Agreement~~.

VCP Comment: If agencies don't have the option to increase revenue through this process, reduction of expenditure language should be deleted.

4.3.7.1: If the State of Vermont's funding and administrative policies and regulations are modified during the term of an Agreement~~.~~ t~~T~~he Department shall provide reasonable advance notice~~fy the DA of that~~ such change to the Agency in writing, via email, and the~~,~~ Agency~~DA~~ shall have a reasonable period of time to ~~-~~implement any required changes, not to exceed 90 calendar days, unless a ~~-~~shorter period is required by law or a longer period of time is agreed to by the parties. If a shorter period is required by law, the Department will provide notice to the Agency~~DA~~ of the change as well as the implementation date as soon as practicable. At least 30 days prior to implementation, the Department will finalize all changes to the policies and regulations and provide prior written notice of the intent to finalize the policy, including any effective dates or implementation dates.
VCP Comment: Agencies should receive written notice, via email, of any changes to funding and administrative policies and regulations throughout the term of an Agreement. We understand that the Department on occasion has to make changes rapidly and can't always permit the 90-day implementation period, but agencies need to be advised of changes as soon as reasonably practicable and need written guidance on the rules and regulations ahead of implementation.

Please add the following as a new section: If the State of Vermont is mandating or implementing a new program during the term of the Agreement, and said initiative requires financial resources to implement, the State will provide a specific cost-related appropriation. If that does not occur, the Agency shall have the choice as to whether to comply with the ask and implement the program.
VCP Rationale: This is an issue that has/is occurring and causes unnecessary friction between the State and the agencies and financial hardship for agencies.

[redacted]

4.4: Early Periodic Screening, Diagnosis and Treatment

VCP comment: Not all agencies serve children. Please adjust language accordingly.

4.4.2: The Agency will ensure intake, evaluation, determination of medical necessity, and provision of services in their catchment area. This includes providing Children's Personal Care Services assessments for children within the catchment area.
VCP Comment: This language should align with the COI changes in roles and responsibilities.

4.6: Culturally and Linguistically Appropriate Services (CLAS)
VCP Comment: DAs implement CLAS, but given the often specialized language needed to adequately communicate, DAs need to work with translators, for both speaking with individuals and providing documents in their first language, who have adequate expertise. These services are expensive and the costs are generally borne by the DAs. We request that AHS consider implementing a source of funding for DAs, or funding a reliable on-demand translation service that DAs can access, so that DAs can continue to serve all individuals in their communities.

4.7.1.10: Recommend or approve new Agency policies relating to governance, ethics, and financial management~~y~~, and significant ~~policy~~ updates to those policies. The Board, at its discretion, may periodically request to review any~~all~~ other policies and procedures.
VCP Comment: The Boards of the agencies are governance boards, not operational boards, and some agencies have hundreds of policies.

4.7.2.1.5: At a minimum, Board By-Laws must include:
VCP Comment: The proposed section 4.7.2.1.5 attempts to control an Agency's corporate governance by dictating the contents of its bylaws. While we understand that AHS has an interest in ensuring that Agencies are financially stable and well-run (and even agree on the importance of that being a reality for each Agency), we view the addition of this Section as problematic and, for the reasons explained below, recommend that this Section be excluded from the final rule. As an overarching matter, this section would require Agencies to amend their bylaws to include specific requirements for Board action. Bylaws are meant to establish how an entity is governed by establishing quorum and notice requirements for meetings, outlining the responsibilities of officers, and establishing other corporate standards. The proposed additions to Agency bylaws go above and beyond establishing standards of corporate governance and, while an Agency may opt to include that level of detail, it should not be required to. Moreover, to comply with the already existing Section 4.7.2.1.2, an Agency's bylaws must include powers and duties of the board, as well as responsibilities of individuals serving as board members. However, those duties and responsibilities, as well as the level of detail included to address each, should be left to the discretion of the Agency and its Board, not dictated by AHS.

The Vermont Nonprofit Corporation Act imposes general standards for directors. See 11B V.S.A. § 8.30. Since each Agency is organized as a nonprofit, each Board is already responsible for complying with these duties. The requirements in the proposed section could be read as unnecessarily narrowing the duties of the Board.

Pursuant to the cited rulemaking authority, AHS has statutory authority to adopt rules that establish standards and procedures for programs provided by Agencies, certification criteria for those programs, and training standards for staff providing the services offered by those programs. There is no clear authority to adopt rules that control Agency corporate governance. It is therefore unclear how this section of the proposed rule falls within AHS's rulemaking authority.

Further, it is not clear that this section of the proposed rule was properly considered under the Vermont Administrative Procedure Act. The stated economic impact of this proposed rule is "none," however, this section of the proposed rule would impose an economic burden as it requires board members to undergo specific training (which is not free) and for financial statements to be prepared at specific intervals and with specific levels of detail, which may result in additional costs to the Agencies. The APA states that the economic impact analysis must consider whether the proposal is the most appropriate and effective way to implement what the Department is trying to achieve. It is not clear that any such analysis occurred in connection with this proposed section, nor is this clearly the most appropriate and effective way to reach the purported goal of ensuring that Agency Boards are aware of the Agency's financial health and contributing to it being well run.

Additionally, it is unclear whether AHS has considered the potential impact on the State of this attempt to control the corporate governance of Agencies. By controlling how an independent agency is governed at the level of minutiae proposed, it undermines an Agency's independence as a non-profit entity contracting with AHS. While Agencies understand that AHS needs to establish standards for programming, when AHS starts getting involved in matters of corporate governance by controlling how a Board operates, the distinction between the independent Agency and the State gets smaller. This seems even more problematic when considering that AHS is then contracting with these Agencies.

For these reasons, we request that the AHS remove this section from the proposed rule. [redacted]

[redacted]

- [redacted]
- [redacted]

- [redacted]

4.7.3: Records and Retention
4.7.3.2: Board documents shall be made available to the State upon request.
VCP Comment: Please define "Board documents". If "Board documents" includes minutes of Board of Director meetings, we request that the following be included: "If the Board determines the need to convene an executive session and that executive session is convened to discuss contracts or confidential attorney-client communications made for the purpose of providing professional legal services to the Agency, the Board may, in its discretion, decline to provide minutes of such executive session to the State."

VCP Comment: Please add: 4.7.3.4: "Certain Agency documents and policies may be exempt from public inspection and copying pursuant to 1 V.S.A. § 317(c). Such documents and policies will continue to be exempt even if provided to the Department in accordance with this Rule."

4.8.2.3: The Local Program Standing Committee may be comprised totally of agency board members if criterion 4.7.2.1 is met.
VCP Comment: It appears the reference to 4.7.2.1 is off.

4.8.2.4: Committee members shall have the knowledge and Agencies shall provide the training necessary to be active participants in the development of the Local Community Services Plan.
VCP Comment: This is for DAIL. Other departments are requiring a Community Needs Assessment.

4.8.3.1.4: Assisting with the development of the Agency's Local Community Services Plan, including establishing priorities for resource allocation, and the schedule for the anticipated provision of new or additional services.
VCP Comment: Same comment as above – other departments are requiring a Community Needs Assessment.

4.9.1.2.2: For developmental services populations; Community inclusion; independent living health and safety trauma evaluation, prevention and mitigation.
VCP Comment: What does the prevention and mitigation refer to?

4.10.1.5: Agency shall be held solely liable for any final adverse decision for the client, made by~~of~~ the hearing officer if it is determined by the Department that the adverse decision was the

result of a lack of critical information requested by the Department that was not provided by the Agency and if provided, may have reasonably resulted in a final decision that was not adverse.
VCP: Edits are for clarity. In addition, adverse decision making has changed for HCBS. Given the new roles and responsibilities of the CMOs, how does that factor in? For DS, records are uploaded to the CRMS as the "final real record" and ISAs are done by the CMOs.

4.11.2: The Agency shall provide treatment and health care data directly to the Vermont Health Information Exchange (VHIE) and shall follow agreed upon directives of ~~from~~ any ~~in~~ ~~accordance with~~ applicable regulations or ~~and~~ agreements, related to its data sharing requirements.~~, including the Health Information Exchange 42 CFR Part 2 Data Governance Documentation~~.

VCP Comment: Edited language for clarity's sake.

4.12: VCP Comment: Given CCBHC, it should say community services plan and/or community needs assessment.

4.13.2.1.7: The Continuity of Services Plan – see section 4.16
VCP Comment: It appears the reference to 4.16 may not be accurate.

4.17.1.4.1: The Designated Agency shall provide all ~~the~~ client records necessary, and in accordance with and permitted by HIPAA and 42CFRPart 2, to maintain continuity of care to the new provider within ten (10) calendar days of the request or the date of transfer to the new provider, whichever occurs first.
VCP Comments: At large, this should be with the client's consent. This is clearly a TPO-related disclosure, and HIPAA provides the individual with the right to request a restriction of TPO-related disclosures, and should the client record include Part 2 records, then a Part 2 consent is required. Additionally, DS Directors, with CMO's, just developed a transfer workflow from one DSO to another. In that, they laid out a 30-day transfer - does this regulation here negate that?

4.19.3: Upon request, and with written notice from the Department of not less than seven (7) business days, the Agency shall comply with the following records requirements:
[redacted]

4.19.3.4: Provide access to contracts with, and payments made to, contractors providing services on behalf of the Agency, which are covered by the Provider Agreement.~~.~~

9.3: The Agency must require its employees, contractors, and providers to furnish, upon reasonable request, to any of the Agency of Human Services, Department of Aging and Independent Living, Department of Mental Health, Department of Vermont Health Access, the Office of the Attorney General, Medicaid Fraud Unit, and the Federal Department of Health and Human Services, any record, document, or other information for health oversight activities; a

review, audit, or investigation of fraud, abuse; or other violation of law. Upon request of an entity identified in this paragraph, The Agency must provide, on a reasonable basis and free of charge, both inspection of original or copied documents held by the Agency or any of its employees, contractors, and providers to the requester or to a HIPAA health oversight agency identified by and contracted with the Department. The Agency understands that the entity requesting this information may have the obligation to share the information, on a confidential basis, with any of the listed entities.

VCP Comment: We suggest making it clear that the Agencies do not need to provide this information to all of the listed entities and should only provide to the requesting entity. We understand that the entity receiving the information may have the obligation to share that with the other listed entities, but it should not be the responsibility of the Agencies to make that determination. With the understanding that an entity might share this information with another state or federal entity, we request that there be some indication that confidentiality be maintained.

9.4: The Agency shall establish procedures by which it will report all suspected fraud, abuse, or other violations of law to AHS~~, the Department, the Department of Vermont Health Access, and the Office of the Attorney General~~. Agencies understand that AHS may be obligated share reports of suspected fraud, abuse, or other violations of law, on a confidential basis, with the Departments and the Attorney General.

VCP Comment: Agencies are already required under HIPAA to report breaches to the federal government, and under the provider agreement, to ADS & AHS. Requiring that these reports be provided to multiple state entities is overly burdensome on the Agencies and creates a barrier for reporting. We request that these reports only be made to one entity (it does not need to be AHS if that is not the logical entity to report to) and that, if that entity determines it is obligated to share the reported information with other entities, it does so. If such a determination is made, we request that any shared information be kept confidential.

Per AHS – Two Public Comments Received

We know these comments were received and as such, wanted to provide feedback. Both are duplicative to other requirements and do not need to be in the Rule but if they are, we recommend the following.

1) Written policy and procedure for use of artificial intelligence (AI) documentation tools, which shall include:
   - Use only with voluntary, informed individual consent, including explicit consent for any recording or ambient listening.
   - Individuals must have a non-AI option without pressure or service impact.

- Agencies must ~~disclose~~ verify that the tool's functions, data practices, and any third-party involvement are compliant with state and federal regulations before use and include information as part of posted information as required. ~~before use.~~

VCP Comment: There are already regulatory requirements for HIPAA and other privacy and security validations for any client record related technology solutions and these should align and be available. Clients have the ability to choose consent to the AI tool (or opt out) and this information should be available, and clients notified of options. This may have been the original intention, but without clarity on 'disclose' would rather restate this bullet. Posted information has the ability for follow up contacts for more details.

2) All staff who come in contact with individual records or the agency's means of digitally storing and accessing records must have training on cybersecurity at hire and refresher training annually

VCP Comment: Cybersecurity training is already required for HIPAA compliance, so adding this would be duplicative. Another option would be to state that the Agencies must be HIPAA compliant.

Johns, Ashley

From: Johns, Ashley
Sent: Monday, July 27, 2026 12:20 PM
To: Johns, Ashley
Subject: FW: question about Agency Designation Rules

From: Barb Prine <bprine@vtlegalaid.org>
Sent: Thursday, June 11, 2026 9:22 AM
To: Schurr, Stuart <Stuart.Schurr@vermont.gov>; Garabedian, Jennifer <Jennifer.Garabedian@vermont.gov>
Subject: RE: question about Agency Designation Rules

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.
Hello Stuart and Jennifer,
Thank you so much for making the time to talk to me today.
Below is the section that I am concerned about and my suggested edits in red. I do appreciate trying to get the Agency to provide records and attend hearings without a subpoena. I do not think we want Agencies to be parties to the hearing.

4.10.1.3 If a client of the Agency files an appeal with the Department or requests a fair hearing, the Agency must promptly provide all requested clinical records and other necessary documentation to the Department

4.10.1.4 When a client files a request for a fair hearing, the Department shall notify the Agency and the Agency shall ~~file a notice of appearance and~~, ***if requested by either party or the hearing officer*** , attend the hearing.

4.10.1.5 The Agency shall be held solely liable for any final adverse decision of the hearing officer if it is determined by the Department that the adverse decision was the result of a lack of critical information that was not provided by the Agency.

Be well,
Barb

Barb Prine (she/her)
Staff Attorney

Vermont Legal Aid
264 N. Winooski Ave
Burlington VT 05401
Phone: 802.383.2254
Legal help website: VTLawHelp.org
My usual workdays are Mondays – Thursdays

From: Barb Prine <bprine@vtlegalaid.org>
Sent: Thursday, June 4, 2026 2:28 PM
To: Spittle, Judy <Judy.Spittle@vermont.gov>; Garabedian, Jennifer <Jennifer.Garabedian@vermont.gov>; Schurr, Stuart <Stuart.Schurr@vermont.gov>
Subject: RE: question about Agency Designation Rules

Hello Jennifer and Stuart,
I have a question about one of the proposed rules for agency designation. Most of the changes look very good and are improvements in quality control, clarity, and fairness.
There is one rule that I have questions about. I don't understand the rationale for this rule, and what problem it is trying to sole. I'd like to talk this through to better understand why DAIL thinks this is important, and how it would actually work.
Do either of you have time to talk to me about this on Monday the 8th or Thursday the 11th? I want to understand this before the Public Hearing on June 12th. As you know, Public Hearings are not places that work to get your questions answered.
Thank you,
Barb

4.10 Required Event Reporting and Fair Hearing Requirements
4.10.1 Individual Complaints, Grievances, and Individual Service Appeals
4.10.1.1 The Agency shall have policies and procedures to address individual complaints, grievances, and appeals that are consistent with requirements established by the Agency of Human Services, and the Department of Vermont Health Access (DVHA) Managed Care policy.
4.10.1.1.1 All grievances and individual service appeals shall be submitted to the Department of Vermont Health Access Warehouse within 14 calendar days of receipt
4.10.1.2 Complaints, grievances, and individual service appeals shall be reviewed regularly, including in aggregate, to identify and address any trends. At a minimum reviewers will include:
4.10.1.2.1 The Board of Directors (or equivalent), per 4.6.1.12
4.10.1.2.2 Local Program Standing Committees, per 4.7.3.1.2.5
4.10.1.2.3 State Program Standing Committees, per 6.2.1.8
4.10.1.2.4 The Department of Mental Health and Department of Disabilities, Aging and Independent Living
4.10.1.3 If a client of the Agency files an appeal with the Department or requests a fair hearing, the Agency must promptly provide all requested clinical records and other necessary

documentation to the Department
4.10.1.4 When a client files a request for a fair hearing, the Department shall notify the Agency and the Agency shall file a notice of appearance and, if requested, attend the hearing.
4.10.1.5 The Agency shall be held solely liable for any final adverse decision of the hearing officer if it is determined by the Department that the adverse decision was the result of a lack of critical information that was not provided by the Agency.

Sincerely,

Barb Prine (she/her)
Staff Attorney

Vermont Legal Aid
264 N. Winooski Ave
Burlington VT 05401
Phone: 802.383.2254
Legal help website: VTLawHelp.org
My usual workdays are Mondays – Thursdays

Citations

Vermont Statutes Online

Title 3 : Executive
Chapter 025 : Administrative Procedure
Subchapter 001 : GENERAL PROVISIONS
(Cite as: 3 V.S.A. § 801)

- **§ 801. Short title and definitions**

(a) This chapter may be cited as the "Vermont Administrative Procedure Act."
(b) As used in this chapter:

(11) "Adopting authority" means, for agencies that are attached to the Agencies of Administration, of Commerce and Community Development, of Natural Resources, of Human Services, and of Transportation, or any of their components, the secretaries of those agencies; for agencies attached to other departments or any of their components, the commissioners of those departments; and for other agencies, the chief officer of the agency. However, for the procedural rules of boards with quasi-judicial powers, for the Transportation Board, for the Vermont Veterans' Memorial Cemetery Advisory Board, and for the Fish and Wildlife Board, the chair or executive secretary of the board shall be the adopting authority. The Secretary of State shall be the adopting authority for the Office of Professional Regulation.

Title 18 : Health
Chapter 207 : Community Mental Health and Developmental Services
(Cite as: 18 V.S.A. § 8907)
§ 8907. Designation of agencies to provide mental health and developmental disability services
(a) Except as otherwise provided in this chapter, the Commissioners of Mental Health and of Disabilities, Aging, and Independent Living shall, within the limits of funds designated by the General Assembly for this purpose, ensure that community services to persons with a mental condition or psychiatric disability and persons with a developmental disability throughout the State are provided through designated community mental health agencies. The Commissioners shall designate public or private nonprofit agencies to provide or arrange for the provision of these services.
(b) Within the limits of available resources, each designated community mental health or developmental disability agency shall plan, develop, and provide or otherwise arrange for those community mental health or developmental disability services that are not assigned by law to the exclusive jurisdiction of another agency and that are needed by and not otherwise available to persons with a mental condition or psychiatric disability or a developmental disability or children and adolescents with a severe emotional disturbance in accordance with the provisions of 33 V.S.A. chapter 43 who reside within the geographic area served by the agency. (Added 1979, No. 108 (Adj. Sess.), § 2; amended 1987, No. 264 (Adj. Sess.), § 11; 2005, No. 174 (Adj. Sess.), § 47; 2007, No. 15, § 15; 2013, No. 96 (Adj. Sess.), § 115; 2023, No. 6, § 218, eff. July 1, 2023.)

Title 18 : Health
Chapter 207 : Community Mental Health and Developmental Services

(Cite as: 18 V.S.A. § 8911)

- **§ 8911. Powers of the Commissioners**

(b) Until May 1, 1998, no agency that has been designated as a community mental health agency may lose its designation without first being provided with notice and an opportunity for hearing in accordance with the provisions of 3 V.S.A. §§ 809-813. After May 1, 1998, no agency may lose its designation except in accordance with new rules adopted for that purpose under the provisions of this subsection. Notwithstanding any other provisions to the contrary in 3 V.S.A. chapter 25, the Commissioner shall, in consultation with the designated provider system and consumer groups, develop proposed rules setting forth the standards and procedures for designation, redesignation, and loss of designation, and provide for six months' notice of intent to revoke an agency's designation. The proposed rules shall also provide standards with measurable performance-based criteria and a streamlined appeals process. On or before December 31, 1997, the Commissioner shall file and hold public hearings on the proposed rules as provided in 3 V.S.A. §§ 838, 839, and 840 in accordance with 3 V.S.A. chapter 25. The Commissioner shall file the final proposed rules with the General Assembly on or before January 15, 1998. Unless disapproved by act of the General Assembly on or before April 1, 1998, the Commissioner may adopt the rules by filing with the Secretary of State, which rules shall take effect on May 1, 1998.

Title 18 : Health
Chapter 207 : Community Mental Health and Developmental Services
(Cite as: 18 V.S.A. § 8913)

- **§ 8913. Minimum program standards and other regulations**

(a) The Commissioners shall establish minimum program standards for services provided by community mental health and developmental disability agencies. Minimum program standards shall specify the basic activities and resources that are necessary for the implementation of such programs.
(b) The procedure for establishing such standards shall be in accordance with 3 V.S.A. chapter 25. (Added 1979, No. 108 (Adj. Sess.), § 8; amended 2005, No. 174 (Adj. Sess.), § 47.)

Title 18 : Health
Chapter 204A : Developmental Disabilities Act
(Cite as: 18 V.S.A. § 8726)

- **§ 8726. Application for services; rules**

(b) The Department shall adopt rules that include the following:
(1) Certification standards and procedures for programs for people with developmental disabilities.
(2) Training standards for staff.
(3) Standards for training and supervision of personnel who perform special care procedures.
(c) Any person with a developmental disability or a family of a person with a disability shall be provided with:
(1) Timely information and referral to community and governmental resources.
(2) An opportunity to request services.

(3) Upon request, an assessment of the most appropriate supports and resources for their needs and choices.
(4) Services and funding within the Department's available resources in accordance with both the system of care plan and the person's or family's written plan of service.
(d) Any person with a developmental disability or a family who is receiving services on July 1, 1996, shall continue to receive services consistent with their needs and the system of care plan. (Added 1995, No. 174 (Adj. Sess.), § 1; amended 2023, No. 6, § 213, eff. July 1, 2023.)

Title 18 : Health
Chapter 204A : Developmental Disabilities Act
(Cite as: 18 V.S.A. § 8730)

- **§ 8730. Service providers; certification**

The Department shall adopt rules that provide for certification standards and procedures for programs for people with developmental disabilities funded by the Department. The Department shall not certify a program unless it adheres to the principles in section 8724 of this title and provides recipients with the rights in section 8728 of this title. (Added 1995, No. 174 (Adj. Sess.), § 1.)

Title 18 : Health
Chapter 204A : Developmental Disabilities Act
(Cite as: 18 V.S.A. § 8731)

- **§ 8731. Training**

(c) The Department shall adopt rules for training standards that ensure that individual support staff understand the philosophy and values that underlie the services and that they acquire the skills necessary to implement the purposes and principles of this subchapter and to address the individual needs of the person or family for whom they provide services.

(802) 828-2863

MEMORANDUM OFFICE OF THE SECRETARY OF STATE

Primary Contact: Ashley Johns, Agency of Human Services, 280 State Drive- Center Building Waterbury, VT, 05676 Tel: 1-802-585-9884 E-Mail: ashley.johns@vermont.gov

Secondary Contact: Kristin Kellett, Agency of Human Services, 280 State Drive- Center Building
Waterbury, VT, 05676 Tel: 1-802-760-8166 E-Mail: kristin.kellett@vermont.gov.

URL: https://humanservices.vermont.gov/rules-policies

From: APA Coordinator, VSARA

RE: Rule on Agency Designation.

Date 07/27/2026

We received Proposed Rule on 05/04/2026
Final Proposed Rule on 07/27/2026
Adopted Rule on
We have assigned the following rule number(s):
Proposed Rule Number: 26P012
Adopted Rule Number:
(Final Proposals are not assigned a new number; they retain the Proposed Rule Number.)

The following problems were taken care of by phone/should be taken care of immediately: Proposed Filing: The URL where the agency is to post the filing on their site is blank, and hearing information does not comply with 3 V.S.A. § 840; new information has been requested. Updated URL, and hearing information rec'd by email 5/5/2026, no further action necessary. Final Proposed: Secondary contact person information updated in database, no further action required.

We cannot accept this filing until the following problems are taken care of:

The notice for this proposed rule appeared/will appear online on: 5/13/2026 and in the newspapers of record on 5/21/2026.

This rule takes effect on
Adoption Deadline: 01/04/2027

Please note:

If you have any questions, please call me at 828-2863. OR
E-Mail me at: sos.statutoryfilings@vermont.gov

cc: Lindsey Schreier; Megan Cannella

OFFICE OF THE SECRETARY OF STATE

VERMONT STATE ARCHIVES & RECORDS ADMINISTRATION (VSARA)

(802) 828-2863

TO:	Seven Days Legals (legals@sevendaysvt.com)	Tel: (802) 865-1020 x110.
	The Caledonian Record Julie Poutré (adv@caledonian-record.com)	Tel: 748-8121 FAX: 748-1613
	Times Argus / Rutland Herald Classified Ads (classified.ads@rutlandherald.com)	Tel: 802-747-6121 ext 2238 FAX: 802-776-5600
	The Valley News (advertising@vnews.com)	Tel: 603-298-8711 FAX: 603-298-0212
	The Addison Independent (legals@addisonindependent.com)	Tel: 388-4944 FAX: 388-3100 Attn: Display Advertising
	The Bennington Banner / Brattleboro Reformer Lylah Wright (lwright@reformer.com)	Tel: 254-2311 ext. 132 FAX: 447-2028 Attn: Lylah Wright
	The Chronicle (ads@bartonchronicle.com)	Tel: 525-3531 FAX: 525-3200
	Herald of Randolph (ads@ourherald.com)	Tel: 728-3232 FAX: 728-9275 Attn: Brandi Comette
	Newport Daily Express (jlafoe@newportvermontdailyexpress.com)	Tel: 334-6568 FAX: 334-6891 Attn: Jon Lafoe
	News & Citizen (mike@stowereporter.com)	Tel: 888-2212 FAX: 888-2173
	St. Albans Messenger Legals (legals@samessenger.com; cfoley@orourkemediagroup.com)	Tel: 524-9771 ext. 117 FAX: 527-1948 Attn: Legals
	The Islander (islander@vermontislander.com)	Tel: 802-372-5600 FAX: 802-372-3025
	Vermont Lawyer (hunter.press.vermont@gmail.com)	Attn: Will Hunter
	VT Digger (legals@vtdigger.org)	Attn: Legals

FROM: APA Coordinator, VSARA **Date of Fax:** July 28, 2026

RE: The "Proposed State Rules " ad copy to run on **May 21, 2026**

PAGES INCLUDING THIS COVER MEMO: **2**

NOTE **8-pt font in body. 12-pt font max. for headings - single space body. Please include dashed lines where they appear in ad copy. Otherwise minimize the use of white space. Exceptions require written approval.**

If you have questions, or if the printing schedule of your paper is disrupted by holiday etc. please contact VSARA at 802-828-3700, or E-Mail sos.statutoryfilings@vermont.gov, Thanks.

PROPOSED STATE RULES

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By law, public notice of proposed rules must be given by publication in newspapers of record. The purpose of these notices is to give the public a chance to respond to the proposals. The public notices for administrative rules are now also available online at https://secure.vermont.gov/SOS/rules/ . The law requires an agency to hold a public hearing on a proposed rule, if requested to do so in writing by 25 persons or an association having at least 25 members.

To make special arrangements for individuals with disabilities or special needs please call or write the contact person listed below as soon as possible.

To obtain further information concerning any scheduled hearing(s), obtain copies of proposed rule(s) or submit comments regarding proposed rule(s), please call or write the contact person listed below. You may also submit comments in writing to the Legislative Committee on Administrative Rules, State House, Montpelier, Vermont 05602 (802-828-2231).

Rule on Agency Designation.

Vermont Proposed Rule: 26P012

AGENCY: Agency of Human Services

CONCISE SUMMARY: This rule sets the requirements for the Agency of Human Services (AHS) to designate nonprofit agencies (“Designated Agencies”) to deliver community mental health and intellectual/developmental disability services in specific geographic areas of Vermont. It also outlines the responsibilities of “Specialized Service Agencies,” which AHS assigns to provide either community mental health or intellectual/developmental disability services statewide. This rule updates rule 24-020 by incorporating provisions from the Provider Agreement applicable to Designated and Specialized Service Agencies which specifies administrative and operational responsibilities.

FOR FURTHER INFORMATION, CONTACT: Ashley Johns, Agency of Human Services, 280 State Drive Center Building Waterbury, VT, 05676 Tel: 1-802-585-9884 E-Mail: ashley.johns@vermont.gov URL: https://humanservices.vermont.gov/rules-policies.

FOR COPIES: Conor O'Dea, Agency of Human Services, 280 State Drive- Center Building Waterbury, VT, 05676 Tel: 1-802-798-9890 E-Mail: conor.odea@vermont.gov.

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(802) 828-2863

MEMORANDUM OFFICE OF THE SECRETARY OF STATE

Primary Contact: Ashley Johns, Agency of Human Services, 280 State Drive- Center Building Waterbury, VT, 05676 Tel: 1-802-585-9884 E-Mail: ashley.johns@vermont.gov

Secondary Contact: Conor O'Dea, Agency of Human Services, 280 State Drive- Center Building
Waterbury, VT, 05676 Tel: 1-802-798-9890 E-Mail: conor.odea@vermont.gov.

URL: https://humanservices.vermont.gov/rules-policies

From: APA Coordinator, VSARA

RE: Rule on Agency Designation.

Date 05/05/2026

We received Proposed Rule on 05/04/2026
Final Proposed Rule on
Adopted Rule on

We have assigned the following rule number(s):
Proposed Rule Number: 26P012
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(Final Proposals are not assigned a new number; they retain the Proposed Rule Number.)

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This rule takes effect on
Adoption Deadline: 01/04/2027

Please note:

If you have any questions, please call me at 828-2863. OR
E-Mail me at: sos.statutoryfilings@vermont.gov

cc: Lindsey Schreier