1. GENERAL PROVISIONS

1.1 Statement of Purpose and Scope

It is the purpose of these rules to implement state and federal law governing the licensing, operation, and standard of care in nursing homes located in the State of Vermont. Compliance with these rules will help each resident attain or maintain the highest practicable physical, mental and psychosocial well-being in accordance with a comprehensive assessment and plan of care and prevailing standards of care, and will promote a standard of care that assures that the ability of each resident to perform activities of daily living does not diminish unless the resident’s ability is diminished solely as a result of a change in the resident’s clinical condition.

2. NURSING FACILITY LICENSING

2.7 Special Care Units

(a) The facility must obtain approval from the licensing agency prior to establishing and operating a Special Care Unit. Approval will be based on a demonstration that the Unit will provide specialized services to a specific population.

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

(1) a statement outlining the philosophy and purpose of the unit, including a description of the form of care, treatment, program or scope of services to be provided that distinguishes it as being especially applicable to or suitable for residents;

(2) a definition of the categories of residents to be served;

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

(4) a description and identification of physical environment;

(5) the criteria for admission, continued stay and discharge which shall also include any criteria used for moving residents within the facility, into or out of a unit; and

(6) a description of unit staffing to include:

(i) staff qualifications,

(ii) orientation,

(iii) in-service education and specialized training, and

(iv) medical management and credentialing as necessary.

...(d) Dementia units shall meet the following staffing and staff training requirements:

(1) Dementia units must provide initial training in addition to general facility training to include eight hours of classroom orientation for all employees assigned to the unit and an additional eight hours of clinical orientation to all nursing employees assigned to the unit. The eight hours of classroom work must include:

(i) A general overview of Alzheimer’s disease and related dementia;

(ii) Communication basics;

(iii) Creating a therapeutic environment;

(iv) Activity focused care;

(v) Dealing with difficult behaviors; and

(vi) Family issues.
(2) Ongoing in-service training shall be provided to all nursing and non-nursing staff, including volunteers, who have any direct contact with residents of the unit. Staff training shall occur at least quarterly. The facility will maintain records of all staff training provided and the qualifications of the presenter. Training over 12 months must include the following subjects:
(i) Alzheimer’s disease and related dementias, including but not limited to, possible causes, general statistics, risk factors, diagnosis, stages and symptoms, and current treatments and research trends;
(ii) Communication, including training related to communication losses that result with dementia, non-verbal techniques, techniques to enhance communication, validation as an approach, and environmental factors that affect communication;
(iii) Ways to create a therapeutic environment, including safety issues, effective strategies for providing care, background noise, staff behavior, and consistency;
(iv) Activity-focused care, including personal care, nutrition and dining, structured leisure, and sexuality;
(v) Dealing with difficult behaviors, including but not limited to, strategies to deal with common behavioral issues such as wandering, sundowning, combativeness, paranoia and ignoring self-care; and
(vi) Family issues such as grief, loss education and support.
(e) Failure to provide the care, treatment, program or scope of services set forth in the request for approval from the licensing agency shall constitute a violation of these rules.
(f) Facilities with existing special care units shall comply with the requirements of subsections (b) and (d) on the date on which the rules take effect. Such facilities shall meet the requirements of subsection (c) as soon as practicable, but no later than six months from the effective date of the rules. Facilities that cannot come into compliance within that time period may request a variance pursuant to section 1.5 of these rules.

2.9 Reports to the Licensing Agency
The following reports must be filed with the licensing agency:
(a) At any time a fire occurs in the home, regardless of the size or damage, the licensing agency and the Department of Labor and Industry must be notified by the next business day. A written report must be submitted to both departments by the next business day. A copy of the report shall be kept on file in the facility.
(b) Any untimely death that occurs as a result of an untoward event, such as an accident that results in hospitalization, equipment failure, use of restraint, etc., shall be reported to the licensing agency by the next business day, followed by a written report that details and summarizes the event.
(c) Any unexplained or unaccounted for absence of a resident for a period of more than 30 minutes shall be reported promptly to the licensing agency. A written report must be submitted by the close of the next business day.
(d) Any breakdown or cessation to the facility’s physical plant that has a potential for harm to the residents, such as a loss of water, power, heat or telephone communications, etc., for four hours or more, shall be reported within 24 hours to the licensing agency.

3. RESIDENTS’ RIGHTS

3.1 Nursing Facility Policies and Procedures
(a) The governing body of the facility shall establish written policies and procedures regarding the rights and responsibilities of residents.
(b) Through the administrator, the governing body is responsible for on-going development of and adherence to procedures implementing such policies.

3.17 Freedom from Restraints and Abuse
...(d) Staff treatment of residents.
(1) The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.
(2) The facility must not use verbal, mental, sexual or physical abuse, corporal punishment, or involuntary seclusion.
(3) A nursing facility shall not employ individuals who have been:
   (i) found guilty of abusing, neglecting, exploiting or mistreating residents by a court of law; or
   (ii) have had a finding entered into the Vermont State Nurse Assistants Registry or the Vermont Adult Abuse Registry concerning abuse, neglect, exploitation or mistreatment of residents or misappropriation of their property.
(e) A nursing facility shall report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the Vermont State Nurse Assistants Registry or the appropriate licensing authority and the licensing agency. Actions by a court of law which indicate unfitness for service include a charge of abuse, neglect or exploitation substantiated against an employee or conviction of an offense for actions related to bodily injury, theft or misuse of funds or property, or other crimes inimical to the public welfare, in any jurisdiction within or outside the State of Vermont.
(f) The facility must ensure that all alleged violations involving mistreatment, neglect, exploitation, or abuse, including injuries of unknown source and misappropriation of resident property are reported immediately to the administrator of the facility and the licensing agency and Adult Protective Services in accordance with 33 V.S.A. Chapter 69.
(g) The facility must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress.
(h) The results of all investigations must be reported to the administrator or his or her designated representative and to the licensing agency in accordance with 33 V.S.A. Chapter 69, and if the alleged violation is verified, appropriate corrective action must be taken.

7.13 Nursing Services
...(c) Registered Nurse.
...(2) The facility must designate a registered nurse to serve as the director of nursing on a full time basis.

9. ADMINISTRATION
The facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental and psychosocial well being of each resident.
9.1 Licensure
(a) A facility must be licensed pursuant to 33 V.S.A. §§ 7103, 7105 and Section 2 of these rules.
Compliance with Federal, State and local laws and professional standards. The facility must operate and provide services in compliance with all applicable Federal, State and local laws, rules and codes and with accepted professional standards and principles that apply to professionals providing services in such a facility.

(1) For standards governing the facility’s water supply and sewage disposal, contact should be made with the state Department of Environmental Conservation.

(2) For standards governing construction and equipment of facilities, reference Guidelines for Construction and Equipment of Hospital and Medical Facilities, current edition.

9.2 Governing Body

(a) The facility must have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility; and

(b) The governing body shall appoint the administrator who shall be:

(1) licensed by the State of Vermont; and

(2) responsible for the management of the facility

10. NURSE AIDE TRAINING

10.1 Nurse Aide Registration
General Rule. A facility must not use an individual working in the facility as a nurse aide for more than 4 months, on a full time basis, unless that individual:

(a) is included on the Vermont State Nurse Assistants Registry; and

(b) is competent to provide nursing and nursing related services.

10.2 Non-Permanent Employees
A facility must not use on a temporary, per diem, leased or any basis other than a permanent employee any individual who does not meet the requirements in subsection 10.1.

10.3 Competency
A facility must not use any individual who has worked less than 4 months as a nurse aide in that facility unless the individual:

(a) is a full-time employee enrolled in a state approved training and competency evaluation program;

(b) has demonstrated competence through satisfactory participation in a state-approved nurse aide training and competency evaluation program; or

(c) is included on the Vermont State Nurse Assistants Registry.

10.4 Registry Verification

(a) Before allowing an individual to serve as a nurse aide, a facility must receive verification from the Vermont State Nurse Assistants Registry that the individual has met competency evaluation requirement unless:

(1) the individual is a full time employee in a training and competency evaluation program approved by the state; or

(2) the individual can prove that he or she has recently successfully completed a training and competency evaluation program or competency evaluation program approved by the state and has not yet been included in the registry. Facilities must follow up to ensure that such an individual actually becomes registered.

(b) Multi-State Registry Verification. Before allowing an individual to serve as a nurse aide, a facility must seek information from every State registry, established under 42
U.S.C. §§1395i-3(e)(2)(A) or 1396r(e)(2)(A), which the facility believes will include information on the individual.

10.5 Required Retraining
If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual provided nursing or nursing-related services for monetary compensation, the individual must complete a new training and competency evaluation program or a new competency evaluation program.

10.6 Regular In-Service Education
(a) Performance reviews. The facility must complete a performance review of every nurse aide at least once every 12 months, and must provide regular in-service education based on the outcome of these reviews.
(b) In-service training. The in-service training must:
(1) be sufficient to ensure the continuing competence of nurse aides, but must be no less than 12 hours per year.
(2) address areas of weakness as determined in nurse aide’s performance reviews and may address special needs of residents as determined by the facility staff; and
(3) for nurse aides providing services to individuals with cognitive impairments, also address the care of the cognitively impaired.

10.7 Proficiency of Nurse Aides
The facility must ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents’ needs, as identified through resident assessments and described in the plan of care.

10.8 Developmental Services
Individuals providing specialized services to residents with development disabilities do not meet the definition of a nurse aide.

11. PROFESSIONAL STAFF

11.1 Professional Qualifications
Professional staff must be licensed, certified, or registered in accordance with applicable laws.

11.2 Use of Outside Resources
(a) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility must have that service furnished to residents by a person or agency outside the facility under an arrangement as described in 42 U.S.C. §1395x(w) or an agreement as described in subsection 11.2(b).
(b) Arrangements as described in 42 U.S.C. §1395x(w) or agreements pertaining to services furnished by outside resources must specify in writing that the facility assumes responsibility for:
(1) obtaining services that meet professional standards and principles that apply to professionals providing services in such a facility; and
(2) the timeliness of the services.

11.3 Medical Director
(a) The facility must designate a physician to serve as medical director.
(b) The medical director is responsible for:
(1) implementation of resident care policies; and
(2) the coordination of medical care in the facility.

12. LABORATORY, RADIOLOGY, AND OTHER DIAGNOSTIC SERVICES

12.1 Laboratory Services
(a) The facility must provide or obtain laboratory services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.
(b) If the facility provides its own laboratory services, the services must meet the applicable requirements for laboratories specified in 42 C.F.R. Part 493.
(c) If the facility provides blood bank and transfusion services, it must meet the applicable requirements for laboratories specified in 42 C.F.R. Part 493.
(d) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be certified in the appropriate specialties and sub-specialties of services in accordance with the requirements of 42 C.F.R. Part 493.
(e) If the facility does not provide laboratory services on site, it must have an agreement to obtain these services from a laboratory that meets the applicable requirements of 42 C.F.R. Part 493.
(f) The facility must:
   (1) provide or obtain laboratory services only when ordered by the attending physician;
   (2) promptly notify the attending physician of findings;
   (3) assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance;
   (4) file in the resident's clinical record laboratory reports that are dated and contain the name and address of the testing laboratory; and
   (5) ensure that transportation costs associated with obtaining laboratory services are not charged to a Medicaid recipient's personal needs allowance.

12.2 Radiology and Other Diagnostic Services
(a) The facility must provide or obtain radiology and other diagnostic services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.
(b) If the facility provides its own diagnostic services, the services must meet the applicable conditions of participation for hospitals contained in 42 C.F.R. §482.26.
(c) If the facility does not provide its own diagnostic services, it must have an agreement to obtain these services from a provider or supplier that is approved to provide these services under Medicare.
(d) The facility must:
   (1) provide or obtain radiology and other diagnostic services only when ordered by the attending physician;
   (2) promptly notify the attending physician of the findings;
   (3) assist the resident in making transportation arrangements to and from the source of the service, if the resident needs assistance;
   (4) file in the resident's clinical record signed and dated reports of x-ray and other diagnostic services, with the name and address of the provider of the service; and
   (5) ensure that the transportation costs associated with obtaining radiology and other diagnostic services are not charged to a Medicaid recipient's personal needs allowance.
13. CLINICAL RECORDS

13.1 Records Maintenance and Retention
(a) The facility must maintain clinical records on each resident in accordance with accepted professional standards and practices that are:
(1) complete;
(2) accurately documented;
(3) readily accessible; and
(4) systematically organized.
(b) All of an individual’s clinical records must be retained for the longer of the following time periods:
(1) eight years from the date of discharge or death; or
(2) for a minor, three years after a resident reaches 18 years of age.
(c) The facility must safeguard clinical record information against loss, destruction or unauthorized use.
(d) The facility must ensure that each clinical record contains a recent photograph of the resident, unless the resident objects.

13.2 Confidentiality
The facility must keep confidential all information contained in the resident’s records, regardless of the form or storage method of the records, except when release is required by:
(a) transfer to another health care institution;
(b) law;
(c) third party payment contract; or
(d) the resident.

13.3 Contents The clinical record must contain:
(a) sufficient information to identify the resident;
(b) a record of the resident’s assessments;
(c) the plan of care and services provided;
(d) the results of any preadmission screening conducted by the state; and
(e) progress notes.

14. DISASTER AND EMERGENCY PREPAREDNESS

14.1 Written Plans
The facility must have detailed written plans and procedures, approved by the Department of Labor and Industry, to meet all potential emergencies and disasters, such as fire, severe weather, and missing residents.

14.2 Employee Training
The facility must train all employees in emergency procedures when they begin to work in the facility, periodically review the procedures with existing staff, and carry out unannounced staff drills using those procedures. Procedures shall include:
(a) At least an annual review of the facility disaster plan;
(b) Periodic staff instruction in disaster drills and information updates;
(c) Quarterly staff fire drills for all shifts; and
(d) Maintenance of written records and evaluations of all drills.
15. TRANSFER AGREEMENTS

15.1 Agreement with Hospital
The facility must have in effect a written transfer agreement with one or more hospitals approved for participation under the Medicare and Medicaid programs that reasonably assures that:
(a) residents will be transferred from the facility to the hospital, and ensured of timely admission to the hospital, when transfer is medically appropriate as determined by the attending physician; and
(b) medical and other information needed for care and treatment of residents, and, when the transferring facility deems it appropriate, for determining whether such residents can be adequately cared for in a less expensive setting than either the facility or the hospital, will be exchanged between the institutions.

16. QUALITY ASSESSMENT AND ASSURANCE

16.1 Quality Assessment Committee
(a) A facility must maintain a quality assessment and assurance committee consisting of:
(1) the director of nursing services;
(2) the medical director; and
(3) at least 3 other members of the facility’s staff.
(b) The quality assessment and assurance committee must:
(1) meet at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary; and
(2) develop and implement appropriate plans of action to correct identified quality deficiencies.

16.2 Disclosure of Records
The State may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this section.

16.3 Sanctions Good faith attempts by the committee to identify and correct quality deficiencies cannot be used as a basis for sanctions.

17. DISCLOSURE OF OWNERSHIP

17.1 Initial Disclosure The facility must comply with the disclosure requirements in subsection 2.5(b).

17.2 On-going Disclosure
The facility must provide written notice to the state agency responsible for licensing the facility, at the time of any change, if a change occurs in:
(a) persons with an ownership or control interest of 5% or more, or who have been convicted of Medicaid fraud;
(b) the officers, directors, agents or managing employees;
(c) the corporation, association or other company responsible for the management of the facility; or
(d) the facility’s administrator or director of nursing.