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:

...(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.

2.8 CHANGES IN STATUS NECESSITATING DISCHARGE OR TRANSFER OF RESIDENTS

(a) Whenever a licensee plans to discontinue all or part of its operation or change its ownership or location, and such change in status would necessitate the discharge or transfer of residents, the administrator shall notify the licensing agency and the State Long Term Care Ombudsman at least 90 days prior to the proposed date of the change.

(b) For Licensees planning a change in status as described above:

(1) All nursing home rules and regulations shall remain fully applicable until all residents have been discharged or transferred.

(2) At least 60 days prior to the date of the planned change in status, the administrator shall provide the licensing agency and the State Long Term Care Ombudsman with a written transfer plan, subject to approval by the licensing agency. This plan shall include the following:

(i) documentation that adequate staff and resident care will be provided;

(ii) the licensee's arrangements to make an orderly transfer of residents and to minimize the health risks; and

(iii) the placement action proposed to be taken for each individual resident.
(3) The administrator, upon request, shall provide the licensing agency with any additional information related to the transfer plan as well as follow-up reports regarding specific placement action.

(4) The licensee shall not admit new residents after the date of written notice required in this section.

3. RESIDENTS’ RIGHTS

3.6 Treatment and Experimental Research

...(b) To the extent permitted by law, the resident has the right to refuse care or treatment, including the right to refuse restraint and to discharge himself or herself from the facility, and to be informed of the consequences of that action. The nursing home shall be relieved of any further responsibility for that refusal.

3.12 Bed Hold and Right of Return

(a) After hospitalization, each resident has the right to return to the first available bed in the nursing home he or she came from, if the patient has not retained his or her bed under subsection 3.12(b), provided the facility is able to meet the resident’s medical needs and the resident’s welfare or that of other residents will not be adversely affected.

(b) Upon payment of his or her usual rate or, in the case of Medicaid residents, his or her certified per diem compensation, each resident has the right to retain his or her bed in the nursing home while absent from the facility due to hospitalization or therapeutic leave, provided such absence does not exceed ten successive days. Upon admission, before a nursing facility allows a resident to go on therapeutic leave and upon or as soon as practicable after transfer to a hospital, a nursing facility must provide written information to the resident and a family member or legal representative that specifies:

(1) The duration of the bed-hold policy during which the resident is permitted to return and resume residence in the nursing facility; and

(2) The nursing facility’s policies regarding bed-hold periods permitting a resident to return.
(c) A nursing facility must establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed-hold period is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident requires the services provided by the facility.

3.14 Transfer and Discharge

...(b) Transfer and Discharge Requirements. The facility must permit each resident to remain in the room or in the facility, and not transfer or discharge the resident from the facility, unless:

(1) the transfer or discharge is necessary for the resident’s welfare and the resident’s needs cannot be met in the facility;

(2) the transfer or discharge is appropriate because the resident’s health has improved sufficiently so the resident no longer needs the services provided by the facility;

(3) the health or safety of individuals in the facility is endangered;

(4) the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a nursing facility, the nursing facility may charge a resident allowable charges under Medicaid;

(5) the facility ceases to operate; or

(6) the transfer or discharge is ordered by a court.

(c) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in this subsection, the circumstances must be documented in the resident’s clinical record. The documentation must be made by the resident’s physician when transfer or discharge is necessary under subsections 3.14(b)(1), (2), (3) or (4) or 3.14 (l).

(d) Notice before transfer or discharge. Before a facility transfers or discharges a resident, the facility must:

(1) notify the resident and, if known, a family member, including a reciprocal beneficiary, or legal representative of the resident, of the proposed transfer or discharge and reasons for the move. The notice shall be in writing and in a language and manner they understand,
and shall be given at least 72 hours before a transfer within the facility and 30 days before the discharge from the facility.

(2) record the reasons in the resident’s clinical record; and

(3) include in the notice the items described in subsection 3.14(e) below.

(e) Contents of the notice. The written notice specified in this subsection shall be on a form provided by the licensing agency or one that is substantially similar and must include the following:

(1) the reason for transfer or discharge;

(2) the effective date of transfer or discharge;

(3) the location to which the resident is being transferred or discharged;

(4) a statement in large print or large point type that the resident has the right to appeal the facility’s decision to transfer or discharge to the State, with the appropriate information regarding how to do so as set forth in 3.14 (h) below;

(5) the name, address and telephone number of the State Long Term Care Ombudsman;

(6) a statement that the resident may remain in place pending the appeal;

(7) for nursing facility residents with developmental disabilities, the mailing address and telephone number of the Developmental Disability Law Project and that of the Vermont Department of Developmental and Mental Health Services, Division of Developmental Services; and/or

(8) for nursing facility residents who are mentally ill, the mailing address and telephone number of Vermont Protection and Advocacy, Inc.

(f) Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(g) Discharge to community setting. No resident appropriate for nursing home care may be discharged to a community setting against his or her will. A facility must document that a resident voluntarily discharged to a community setting understood fully all options for care and understood fully the right to refuse such a discharge.

(h) Appeal process. A resident has the right to appeal the facility’s decision to transfer or discharge. The process for appeal is as follows:

(1) To appeal the decision to transfer or discharge, the resident must notify the administrator of the facility or the director of the licensing agency. Upon receipt of an appeal, the administrator must immediately notify the director of the licensing agency.
(2) The request to appeal the decision may be oral or written and must be made within 10 business days of the receipt of the notice by the resident.

(3) Both the facility and the resident shall provide all the materials deemed relevant to the decision to transfer or discharge to the director of the licensing agency as soon as the notice of appeal is filed. The resident may submit orally if unable to submit in writing. Copies of all materials submitted to the licensing agency shall be provided to the resident by the facility.

(4) The director of the licensing agency will render a decision within eight business days of receipt of the notice of appeal.

(5) The notice of decision from the director will be sent to the resident and to the facility, will state that the decision may be appealed to the Human Services Board, and will include information on how to do so.

(6) The resident or the facility will have 10 business days to file a request for an appeal with the Human Services Board by writing to the Board. The Human Services Board will conduct a de novo evidentiary hearing in accordance with 3 V.S.A. §3091.

(i) Transfer or Discharge Agreement. If the resident agrees to the transfer or discharge, the transfer or discharge may occur prior to the effective date of the notice.

(j) Relocation Charges. A facility is responsible for any charges associated with disconnecting, relocating or reconnecting telephones, cable television, air-conditioning or other similar costs resulting from a facility's decision to transfer the resident within the facility.

(k) Right to Redeem. When non-payment is the basis for the discharge from a facility, the resident has the right to redeem up to the effective date of the discharge. If the resident redeems in full, the discharge proceedings will be terminated and the resident has the right to remain in the facility.

(l) Emergency Transfer or Discharge of Residents. An emergency discharge or transfer may be made with less than thirty (30) days' notice under the following circumstances:

(1) The resident’s attending physician documents in the resident’s record that the discharge or transfer is an emergency measure necessary for the health and safety of the resident or other residents; or

(2) A natural disaster or emergency necessitates the evacuation of residents from the home; or

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

(4) When ordered or permitted by a court.

3.15 Equal Access to Quality Care

(a) A facility must establish and maintain identical policies and practices regarding admission, transfer, discharge, and the provision of services under the State Medicaid Plan for all individuals regardless of source of payment.

(b) The facility may charge any amount for services furnished to non-Medicaid residents consistent with the notice requirement in paragraph 3.16(c) of this section describing the charges.

3.16 Admissions and Payment Policy

(a) A nursing facility shall not:

(1) require residents or potential residents to waive their rights to Medicare or Medicaid;

(2) require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits; and

(3) require, request, or accept a deposit or other payment from a Medicare or Medicaid beneficiary as a condition for admission, continued care, or the provision of service.

(b) A nursing facility shall not require a third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility.

However, the facility may require an individual who has legal right and access to a resident’s income or resources available to pay for facility care to sign a contract, without incurring personal financial liability, to provide facility payment from a resident’s income or resources.

(c) Each resident shall be fully informed, prior to or at the time of admission and during their stay of services available in the facility and of related charges, including any charges for services not covered under Medicare or Medicaid, or not covered by the facility’s basic per diem rate, including the facility’s policy on providing toiletries, adult briefs, wheelchairs, and all personal care and medical items.

(d) The facility shall inform residents in writing about Medicaid and Medicare eligibility and what is covered under those programs including information on resource limits and
allowable uses of the resident’s income for items and services not covered by Medicaid and Medicare.

(e) In the case of a person eligible for Medicaid, a nursing facility must not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State Medicaid Plan, any gift, money, donation, or other consideration as a precondition of admission, expedited admission or continued stay in the facility.

However,

(1) a nursing facility may charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in the State Medicaid Plan as included in the term “nursing facility services” so long as the facility gives proper notice of the availability and cost of these services to residents and does not condition the resident’s admission or continued stay on request for and receipt of such additional services; and

(2) a nursing facility may solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to a Medicaid eligible resident or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the facility for a Medicaid eligible resident.

(f) The facility shall inform each resident when changes are made to the items and services specified in subsections 3.16(c) and 3.16(d) above.

(g) Anyone admitted to a nursing facility shall receive options counseling as follows:

(1) Anyone seeking admission to a nursing facility directly from home or from a residential care home shall receive options counseling prior to admission to the nursing facility. Upon receipt of an application for admission to the nursing facility, the facility shall inform the individual of the requirement for options counseling. The facility shall make a written referral, using a form provided by the Department, to the local options counseling agency upon receipt of the application and prior to admitting the individuals.

(2) An individual who is hospitalized and seeking admission to a nursing facility may be discharged directly from the hospital to the nursing facility. In such instances, the individual shall receive options counseling no later than three working days after admission to the facility, unless the options counseling agency has provided option counseling in the hospital. The nursing facility shall make a referral in writing to the options counseling agency in the area no later than one working day after agreeing to admit the individual. If upon admission it is determined that the individual will remain in the facility for no longer than 21 days, the options counseling agency may elect not to conduct options counseling within three working days.
(3) If an individual needs emergency admission to a nursing facility, the individual may be admitted to the facility prior to receiving options counseling. Emergency is defined for purposes of this section as a situation in which an individual is likely to experience death or serious and permanent harm unless admitted to a nursing facility.

(4) An individual admitted to or requesting admission to a nursing facility may decline options counseling after contact by the options counseling agency. The decision to decline options counseling must be recorded in the resident’s record.

(5) Options counseling is not required for individuals re-admitted to the nursing facility after a hospital stay or other short absence, or for individuals transferred from one nursing facility to another or for individuals entering for a respite stay.

(6) Options counseling shall be provided by the Department or by an organization under contract with the Department.