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Agency of Human Services

Memorandum

**To: Legislative Committee on Administrative
Rulemaking (LCAR)**
From: Department for Children and Families
**Re: 22-E15 — Transitional Housing Program
Emergency Rules**
Date: January 17, 2023

The Department for Children and Families (DCF) submits this memorandum in response to LCAR's letter dated January 5, 2023.

DCF would like to thank LCAR for their continued willingness to discuss this critical program with DCF, particularly in light of the many federal and state funding changes that have impacted this program and been reviewed by the Joint Fiscal Committee. DCF has worked hard to try and maintain clarity and consistency for the participants in the program through these changes. The specific clarity of the date ending new applications on October 1, 2022, ensures the sustainability of the program for those currently housed through the winter months. DCF has worked in partnership with the Legislature to also provide for emergency housing, in the same provider system, for Vermonters experiencing homelessness this winter who are not in the transitional housing program.

In its letter, LCAR indicated its intent to object to the Transitional Housing Program Emergency Rules adopted on September 28, 2022 on the grounds that section TH-102(8), which establishes a deadline of October 1, 2022 for new applications, is contrary to legislative intent.

Section E.325.1 of 2022 Acts and Resolves No. 185 (the Act) authorized DCF to file a second emergency rule to be effective upon the expiration of the Transitional Housing Program Emergency Rules adopted on March 31, 2022. The Act required the second emergency rule to be "substantially similar" to the original emergency rule.

DCF added new language to four sections of the original rule: (1) in section TH-100, DCF added language authorizing the use of state funds; (2) in section TH-102, DCF established a deadline of October 1, 2022 for new applications; (3) in section TH-109, DCF established a limit of \$5,250 on monthly financial assistance; and (4) in section TH-110, DCF established a limit of \$3,300 on security

deposits. Other than establishing a deadline for applications, the eligibility criteria in the second emergency rule are identical to the first emergency rule.

There is no definition in the Act for “substantially similar.” Likewise, Vermont case law does not provide a definition for “substantially similar” in this context. In other contexts, the Court implies that “substantially similar” means a high degree of similarity in both content and meaning. *Cf. Morais v. Yee*, 162 Vt. 366, 373 (1994) (citing statutes from other states with different text but comparable meanings).

It is DCF’s position that the Transitional Housing Program Emergency rules adopted on September 28, 2022 satisfy the “substantially similar” requirement in the Act. For individuals participating in the program as of October 1, 2022, their rights and responsibilities under the program did not change. The October 1 deadline ensured that those individuals would be able to continue participating in the program through the end of March.