

SEN. MARK A. MACDONALD, VICE CHAIR
SEN. CHRISTOPHER BRAY
SEN. VIRGINIA "GINNY" LYONS
SEN. DAVID WEEKS



REP. TREVOR SQUIRRELL, CHAIR
REP. SETH BONGARTZ
REP. MARK HIGLEY
REP. CAROL ODE

STATE OF VERMONT

Legislative Committee on Administrative Rules (LCAR)

MEMO TO: Hon. Sarah Copeland Hanzas, Secretary of State
Shayla Livingston, Director of Policy, Agency of Human Services
Heidi Moreau, Policy Analyst, Department for Children and Families

CC: Sen. Kitchel, Chair of the Senate Committee on Appropriations
Rep. Lanpher, Chair of the House Committee on Appropriations
Sen. Lyons, Chair of the Senate Committee on Health and Welfare
Rep. Wood, Chair of the House Committee on Human Services
Louise Corliss, Administrative Services/APA Manager I, Vermont State
Archives & Records Administration

FROM: Legislative Committee on Administrative Rules

DATE: August 10, 2023

SUBJECT: 23-E05, Pandemic-Era General Assistance Emergency Housing Transition

The Legislative Committee on Administrative Rules (LCAR) reviewed emergency rule [23-E05](#), Pandemic-Era General Assistance Emergency Housing Transition, at LCAR's July 27, 2023, meeting and unanimously voted to neither approve nor object to the rule. LCAR based this vote, in part, on the recommendations in the July 22, 2023, memorandum from the chairs of the applicable committees of jurisdiction; oral testimony from Heidi Moreau, Policy Analyst, Department for Children and Families, and Nicole Tousignant, Senior Policy and Operations Director, Department for Children and Families; and oral and written testimony from Michael Benvenuto, Project Director, Elder Law Unit, Vermont Legal Aid. See [Memorandum from Sen. Kitchel, et al. to LCAR, Jul. 22, 2023](#); [Jul. 27, 2023, LCAR Meeting at 9:25–1:25:25](#); [Memorandum from M. Benvenuto to LCAR, Jul. 21, 2023](#).

This memorandum explains LCAR's concerns with 23-E05 to the Department for Children and Families. It further provides LCAR's expectations for how the Department should proceed with further rulemaking related to the emergency housing transition benefit established in [2023 Acts and Resolves No. 81, Secs. 5–10](#) (emergency housing transition benefit). As will be elaborated upon, it is LCAR's expectation that the Department for Children and Families will work with the General Assembly to adopt one or more emergency rules, ideally to take effect not later than October 15, 2023, that fully address LCAR's concerns with the current rulemaking and that, as intermediary steps, the Department for Children and Families will file a memorandum on its efforts related to the emergency housing transition benefit with LCAR not later than 12:00 noon on September 18, 2023, and provide a draft copy of an emergency rule that addresses substantive

concerns with the emergency housing transition benefit unrelated to its conflation with the General Assistance program to the chairs of the committees of jurisdiction not later than September 28, 2023.

In 23-E05, the Department for Children and Families amends the Department's existing permanent General Assistance Rules to include the emergency housing transition benefit. *See* 23-E05 (emergency rule amendments to General Assistance Rules, Sec. 2652.5). While LCAR understands that this was done to achieve efficiencies in administering the temporary emergency housing transition benefit and permanent General Assistance program and also to have rules in effect to regulate the emergency housing transition benefit by July 1, 2023, this approach conflates a temporary benefit with the permanent General Assistance program in a way that LCAR finds to be contrary to the intent of the General Assembly. However, LCAR is choosing not to object to 23-E05 on this ground; pursuant to the Administrative Procedure Act, LCAR's decision not to object should not be considered "an implied legislative authorization of [the emergency rule's] substantive or procedural lawfulness." [3 V.S.A. § 844\(e\)\(2\)](#).

Instead, LCAR expects that, consistent with the intent of the General Assembly, the emergency housing transition benefit will be bifurcated from the General Assistance Rules and General Assistance program in a future emergency rulemaking. While Heidi Moreau indicated during LCAR's July 27, 2023, meeting that it is the intent of the Department for Children and Families to bifurcate the emergency housing transition benefit from the General Assistance Rules with the adoption of a second emergency rule when 23-E05 expires on December 28, 2023, given the circumstances, LCAR requests that this happen not later than October 15, 2023. Failure to fully disentangle the emergency housing transition benefit from the General Assistance program in future rulemakings may result in LCAR objecting to the future rulemaking on the grounds that it is contrary to the intent of the General Assembly. Such an expectation should not be interpreted to mean that LCAR will object if there are administrative similarities between the emergency housing transition benefit and the General Assistance program, and LCAR fully expects that portions of the General Assistance Rules may be incorporated by reference or cited to in future rulemakings related to the emergency housing transition benefit.

LCAR also shares the concerns raised by Vermont Legal Aid that (1) there is not a definition of "misconduct" applicable to the emergency housing transition benefit in 23-E05 and, as a result, beneficiaries receiving this benefit at different hotels or motels may receive inconsistent treatment for the same behavior depending on the rules of a participating hotel or motel and (2) there is not sufficient guidance available on what is an appropriate alternative placement for purposes of an individual no longer being eligible to participate in the emergency housing transition benefit after declining an alternative placement. Heidi Moreau indicated during LCAR's July 27, 2023, meeting that a second emergency rule or one or more additional policy documents will address the concerns raised by Vermont Legal Aid and be developed in consultation with the chairs of the legislative committees of jurisdiction. Given the fact that individuals are already participating in the emergency housing transition benefit, which was adopted through rulemaking, LCAR hopes that these concerns will be addressed in a new emergency rule to take effect not later than October 15, 2023. LCAR requests that a draft copy of this emergency rule be provided to the chairs of the committees of jurisdiction, all of whom are copied on this memorandum, not later than September 28, 2023.

Finally, Heidi Moreau indicated that the Department for Children and Families was willing to provide a memorandum to LCAR with a timeline for when another emergency rule or rules will be adopted and how this information will be disseminated to participants and providers in the emergency housing transition benefit. LCAR looks forward to receiving a written update on the Department for Children and Families' efforts related to the emergency housing transition benefit not later than 12:00 noon on September 18, 2023, so that LCAR can further discuss its concerns related to the emergency housing transition benefit and take testimony from the Department for Children and Families at LCAR's September 21, 2023, meeting.