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H.15

Introduced by Representative Donahue of Northfield

Referred to Committee on

Date:

Subject: Health; mental health; statutory reorganization

Statement of purpose: This bill proposes to reorganize the mental health statutes in the Vermont Statutes Annotated.

An act relating to the reorganization of the mental health statutes

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 18 V.S.A. chapter 170 is added to read:

CHAPTER 170. DEPARTMENT OF MENTAL HEALTH AND

OVERSIGHT OF MENTAL HEALTH SERVICES

Subchapter 1. Principles

§ 7001. PRINCIPLES FOR MENTAL HEALTH CARE REFORM

The General Assembly adopts the following principles as a framework for reforming the mental health care system in Vermont:

(1) The State of Vermont shall meet the needs of individuals with mental health conditions, including the needs of individuals in the custody of the Commissioner of Corrections, and the State's mental health system shall reflect excellence, best practices, and the highest standards of care.

1 (2) Long-term planning shall look beyond the foreseeable future and
2 present needs of the mental health community. Programs shall be designed to
3 be responsive to changes over time in levels and types of needs, service
4 delivery practices, and sources of funding.

5 (3) Vermont's mental health system shall provide a coordinated
6 continuum of care by the Departments of Mental Health and of Corrections,
7 designated hospitals, designated agencies, and community and peer partners to
8 ensure that individuals with mental health conditions receive care in the most
9 integrated and least restrictive settings available. Individuals' treatment
10 choices shall be honored to the extent possible.

11 (4) The mental health system shall be integrated into the overall health
12 care system.

13 (5) Vermont's mental health system shall be geographically and
14 financially accessible. Resources shall be distributed based on demographics
15 and geography to increase the likelihood of treatment as close to the patient's
16 home as possible. All ranges of services shall be available to individuals who
17 need them, regardless of individuals' ability to pay.

18 (6) The State's mental health system shall ensure that the legal rights of
19 individuals with mental health conditions are protected.

20 (7) Oversight and accountability shall be built into all aspects of the
21 mental health system.

1 (8) Vermont’s mental health system shall be adequately funded and
2 financially sustainable to the same degree as other health services.

3 (9) Individuals with a mental health condition who are in the custody of
4 the Commissioner of Mental Health and who receive treatment in an acute
5 inpatient hospital, intensive residential recovery facility, or a secure residential
6 facility shall be afforded at least the same rights and protections as those
7 individuals cared for at the former Vermont State Hospital.

8 Subchapter 2. Definitions

9 § 7002. DEFINITIONS

10 As used in this part of this title, the following words, unless the context
11 otherwise requires, shall have the following meanings:

12 (1) “Adult foster care” shall have the same meaning as in
13 33 V.S.A. § 502.

14 (2) “Adult outpatient services” means flexible services responsive to
15 individuals’ preferences, needs, and values that are necessary to stabilize,
16 restore, or improve the level of social functioning and well-being of
17 individuals with mental health conditions, including individual and group
18 treatment, medication management, psychosocial rehabilitation, and case
19 management services.

20 (3) “Board” means the Board of Mental Health.

1 (4) “Children and adolescents with a severe emotional disturbance”
2 means those persons defined as such under 33 V.S.A. § 4301(3).

3 (5) “Commissioner” means either the Commissioner of Mental Health
4 or the Commissioner of Disabilities, Aging, and Independent Living, or both,
5 depending on the circumstances and subject matter of the issue or issues being
6 addressed.

7 (6) “Custody” means safe-keeping, protection, charge, or care.

8 (7) “Designated agency” means a designated community mental health
9 and developmental disability agency as described in subsection 7454(a) of this
10 title.

11 (8) “Designated area” means the counties, cities, or towns identified by
12 the Department of Mental Health that are served by a designated agency.

13 (9) “Designated hospital” means a hospital or other facility designated
14 by the Commissioner as adequate to provide appropriate care for the mentally
15 ill patient.

16 (10) “Disability” means, with respect to an individual:

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

20 (B) a record of such an impairment; or

21 (C) being regarded as having such an impairment.

1 (11) “Drug addict” means a person who shows signs of mental illness
2 because of his or her use of drugs, hallucinogens, stimulants, or sedatives or
3 who has an uncontrollable desire for their use or consumption.

4 (12) “Elopement” means the leaving of a designated hospital or
5 designated program or training school without lawful authority.

6 (13) “Enhanced programming” means targeted, structured, and specific
7 intensive mental health treatment and psychosocial rehabilitation services for
8 individuals in individualized or group settings.

9 (14) “Family member” means an individual who is related to the
10 individual with a disability by blood, marriage, or adoption or considers him-
11 or herself to be family based upon bonds of affection, and who currently shares
12 a household with the individual with a disability or has, in the past, shared a
13 household with that individual. For the purposes of this section, “bonds of
14 affection” means enduring ties that do not depend on the existence of an
15 economic relationship.

16 (15) “Head of a hospital” means the administrator or persons in charge
17 at any time.

18 (16) “Home care provider” means a person or entity paid by an agency
19 designated by the Department of Disabilities, Aging, and Independent Living
20 or of Mental Health to provide developmental disability and mental health
21 services, to provide care in his or her home.

1 (17) “Home care services” shall have the same meaning as in
2 33 V.S.A. § 502.

3 (18) “Hospital” means a public or private hospital or facility or part
4 thereof, equipped and otherwise qualified to provide in-patient care and
5 treatment for the mentally ill.

6 (19) “Household members” means persons living together or sharing
7 occupancy.

8 (20) “Individual” means a resident of or a person in Vermont.

9 (21) “Intensive residential recovery facility” means a licensed program
10 under contract with the Department of Mental Health that provides a safe,
11 therapeutic, recovery-oriented residential environment to care for individuals
12 with one or more mental health conditions who need intensive clinical
13 interventions to facilitate recovery in anticipation of returning to the
14 community. This facility shall be for individuals not in need of acute inpatient
15 care and for whom the facility is the least restrictive and most integrated
16 setting.

17 (22) “Interested party” means a guardian, spouse, parent, adult child,
18 close adult relative, a responsible adult friend, or person who has the individual
19 in his or her charge or care. It also means a mental health professional, a law
20 enforcement officer, a licensed physician, a head of a hospital, a selectman, a
21 town service officer, or a town health officer.

1 (23) “Law enforcement officer” means a sheriff, deputy sheriff,
2 constable, municipal police officer, or state police.

3 (24) “Licensed physician” means a physician legally qualified and
4 licensed to practice as a physician in Vermont.

5 (25) “Mental health professional” means a person with professional
6 training, experience, and demonstrated competence in the treatment of mental
7 illness who shall be a physician, psychologist, social worker, mental health
8 counselor, nurse, or other qualified person designated by the Commissioner.

9 (26) “Mental illness” means a substantial disorder of thought, mood,
10 perception, orientation, or memory, any of which grossly impairs judgment,
11 behavior, capacity to recognize reality, or ability to meet the ordinary demands
12 of life, but shall not include mental retardation.

13 (27) “Mentally retarded individual” means an individual who has
14 significantly subaverage general intellectual functioning existing concurrently
15 with deficits in adaptive behavior.

16 (28) “Mobile support team” means professional and peer support
17 providers who are able to respond to an individual where he or she is located
18 during a crisis situation.

19 (29) “Noncategorical case management” means service planning and
20 support activities provided for adults by a qualified mental health provider,
21 regardless of program eligibility criteria or insurance limitations.

1 (30) “No refusal system” means a system of hospitals and intensive
2 residential recovery facilities under contract with the Department of Mental
3 Health that provides high intensity services, in which the facilities shall admit
4 any individual for care if the individual meets the eligibility criteria established
5 by the Commissioner in contract.

6 (31) “Participating hospital” means a hospital under contract with the
7 Department of Mental Health to participate in the no refusal system.

8 (32) “Patient” means a resident of or person in Vermont qualified under
9 this title for hospitalization or treatment as a mentally ill or mentally retarded
10 individual.

11 (33) “A patient in need of further treatment” means:

12 (A) A person in need of treatment; or

13 (B) A patient who is receiving adequate treatment, and who, if such
14 treatment is discontinued, presents a substantial probability that in the near
15 future his or her condition will deteriorate and he or she will become a person
16 in need of treatment.

17 (34) “A person in need of treatment” means a person who is suffering
18 from mental illness and, as a result of that mental illness, his or her capacity to
19 exercise self-control judgment, or discretion in the conduct of his or her affairs
20 and social relations is so lessened that he or she poses a danger of harm to
21 himself, to herself, or to others:

1 (A) A danger of harm to others may be shown by establishing that:

2 (i) he or she has inflicted or attempted to inflict bodily harm on
3 another; or

4 (ii) by his or her threats or actions, he or she has placed others in
5 reasonable fear of physical harm to themselves; or

6 (iii) by his or her actions or inactions, he or she has presented a
7 danger to persons in his or her care.

8 (B) A danger of harm to himself or herself may be shown by
9 establishing that:

10 (i) he or she has threatened or attempted suicide or serious bodily
11 harm; or

12 (ii) he or she has behaved in such a manner as to indicate that he
13 or she is unable, without supervision and the assistance of others, to satisfy his
14 or her need for nourishment, personal or medical care, shelter, or
15 self-protection and safety, so that it is probable that death, substantial physical
16 bodily injury, serious mental deterioration, or serious physical debilitation or
17 disease will ensue unless adequate treatment is afforded.

18 (35) "Peer" means an individual who has a personal experience of living
19 with a mental health condition or psychiatric disability.

1 (36) “Peer services” means support services provided by trained peers or
2 peer-managed organizations focused on helping individuals with mental health
3 and other co-occurring conditions to support recovery.

4 (37) “Psychosocial rehabilitation” means a range of social, educational,
5 occupational, behavioral, and cognitive interventions for increasing the role
6 performance and enhancing the recovery of individuals with serious mental
7 illness, including services that foster long-term recovery and self-sufficiency.

8 (38) “Recovery-oriented” means a system or services that emphasize the
9 process of change through which individuals improve their health and
10 wellness, live a self-directed life, and strive to reach their full potential.

11 (39) “Relevant information” means information needed to protect the
12 individual and others from harm, including any relevant history of violent
13 behavior or conduct causing danger of harm to others, as defined in
14 subdivision (34)(A) of this section, any medications presently prescribed to the
15 individual, and any known precursors of dangerous behavior that may cause
16 future harm.

17 (40) “Resident of Vermont” means:

18 (A) a person who has lived continuously in Vermont for one year
19 immediately preceding his or her admission as a patient or immediately
20 preceding his or her becoming a proposed patient; or

1 (B) a person who has a present intention to make Vermont his or her
2 home for an indefinite period of time. This intention may be evidenced by
3 prior statements or it may be implied from facts which show that the person
4 does in fact make Vermont his or her permanent home. A married woman
5 shall be capable of establishing a legal residence apart from her husband, and a
6 child under 18 years shall take legal residence of the parent or guardian with
7 whom he or she is actually living.

8 (41) “Respite provider” means a person paid by a home care provider to
9 provide care by the day or overnight in the person’s home.

10 (42) “Retreat” means the Brattleboro Retreat.

11 (43) “Secretary” means the Secretary of Human Services.

12 (44) “Secure” when describing a residential facility, means that the
13 residents can be physically prevented from leaving the facility by means of
14 locking devices or other mechanical or physical mechanisms.

15 (45) “Secure residential recovery facility” means a residential facility,
16 licensed as a therapeutic community residence as defined in
17 33 V.S.A. § 7102(11), for an individual who no longer requires acute inpatient
18 care but who does remain in need of treatment within a secure setting for an
19 extended period of time. A secure residential recovery facility shall not be
20 used for any purpose other than the purposes permitted by section 7660 of this
21 title.

1 (46) “Serious bodily injury” means the same as in section 1912 of this
2 title.

3 (47) “Successor in interest” means the mental health hospital owned and
4 operated by the State that provides acute inpatient care and replaces the
5 Vermont State Hospital.

6 (48) “Vermont” means the State of Vermont.

7 (49) “Voluntary patient” means an individual admitted to a hospital
8 voluntarily or an individual whose status has been changed from involuntary to
9 voluntary.

10 (50) “Warm line” means a nonemergency telephone response line
11 operated by trained peers for the purpose of active listening and assistance with
12 problem-solving for persons in need of such support.

13 Subchapter 3. The Department of Mental Health

14 § 7003. MENTAL HEALTH

15 The Department of Mental Health, as the successor to the Division of
16 Mental Health Services of the Department of Health, shall centralize and more
17 efficiently establish the general policy and execute the programs and services
18 of the State concerning mental health, and integrate and coordinate those
19 programs and services with the programs and services of other departments of
20 the State, its political subdivisions, and private agencies, so as to provide a

1 flexible comprehensive service to all citizens of the State in mental health and
2 related problems.

3 § 7004. INTEGRATION OF THE TREATMENT FOR MENTAL HEALTH,

4 SUBSTANCE ABUSE, AND PHYSICAL HEALTH

5 (a) The Director of Health Care Reform, the Commissioners of Mental
6 Health, of Health, and of Vermont Health Access, and the Green Mountain
7 Care Board or designees shall ensure that the redesign of the mental health
8 delivery system established in this part is an integral component of the health
9 care reform efforts established in 3 V.S.A. § 2222a. Specifically, the Director,
10 Commissioners, and Board shall confer on planning efforts necessary to ensure
11 that the following initiatives are coordinated and advanced:

12 (1) Any health information technology projects.

13 (2) The integration of health insurance benefits in the Vermont Health
14 Benefit Exchange to the extent feasible under federal law.

15 (3) The integration of coverage under Green Mountain Care.

16 (4) The Blueprint for Health.

17 (5) The reformation of payment systems for health services to the extent
18 allowable under federal law or under federal waivers.

19 (6) Other initiatives as necessary.

1 (b) The Department of Financial Regulation shall ensure that private payers
2 are educated about their obligation to reimburse providers for less restrictive
3 and less expensive alternatives to hospitalization.

4 § 7005. COORDINATION

5 The Department of Mental Health shall be responsible for coordinating
6 efforts of all agencies and services, government and private, on a statewide
7 basis in order to promote and improve the mental health of individuals through
8 outreach, education, and other activities. The Department of Disabilities,
9 Aging, and Independent Living shall be responsible for coordinating the efforts
10 of all agencies and services, government and private, on a statewide basis in
11 order to promote and improve the lives of individuals with developmental
12 disabilities.

13 § 7006. RECOMMENDATIONS AND REPORTS

14 The Department shall from time to time study comprehensively the mental
15 health problems of the State, develop programs for mental health services, and
16 recommend as to the integration within the Department of any other related
17 agencies and services as it considers proper. It shall also periodically review
18 and evaluate the mental health programs.

19 § 7007. REPORTING REQUIREMENTS

20 Notwithstanding 2 V.S.A. § 20(d), the Department of Mental Health shall
21 report annually on or before January 5 to the Senate Committee on Health and

1 Welfare and the House Committee on Human Services regarding the extent to
2 which individuals with mental health conditions receive care in the most
3 integrated and least restrictive setting available. The report shall address:

4 (1) Utilization of services across the continuum of mental health
5 services.

6 (2) Adequacy of the capacity at each level of care across the continuum
7 of mental health services.

8 (3) Individual experience of care and satisfaction.

9 (4) Individual recovery in terms of clinical, social, and legal outcomes.

10 (5) Performance of the State's mental health system of care as compared
11 to nationally recognized standards of excellence.

12 § 7008. REVIEW OF ADVERSE COMMUNITY EVENTS

13 The Department of Mental Health shall establish a system that ensures the
14 comprehensive review of a death or serious bodily injury occurring outside an
15 acute inpatient hospital when the individual causing or victimized by the death
16 or serious bodily injury is in the custody of the Commissioner or had been in
17 the custody of the Commissioner within six months of the event. The
18 Department shall review each event for the purpose of determining whether the
19 death or serious bodily injury was the result of inappropriate or inadequate
20 services within the mental health system and, if so, how the failure shall be
21 remedied.

1 § 7009. PLANNING; GRANTS; CLINICS

2 The Department is the authority in this State for planning a comprehensive
3 mental health program. It may apply for and receive grants from the federal
4 government and other sources for that planning. It shall operate such clinics
5 and other mental health units as it may consider necessary and shall fulfill the
6 State's responsibilities as to community mental health services, so far as
7 practical.

8 § 7010. SUPERVISION OF INSTITUTIONS

9 (a) The Department of Mental Health shall operate the Vermont State
10 Hospital or its successor in interest and shall be responsible for patients
11 receiving involuntary treatment.

12 (b) The Commissioner of Mental Health, in consultation with the Secretary,
13 shall appoint a Chief Executive Officer of the Vermont State Hospital or its
14 successor in interest to oversee the operations of the hospital. The Chief
15 Executive Officer position shall be an exempt position.

16 § 7011. TREATMENT

17 (a) Outpatient or partial hospitalization shall be preferred to inpatient
18 treatment. Emergency involuntary treatment shall be undertaken only when
19 clearly necessary. Involuntary treatment shall be utilized only if voluntary
20 treatment is not possible.

1 (b) The Department shall establish minimum standards for adequate
2 treatment as provided in this section, including requirements that, when
3 possible, psychiatric unit staff be used as the primary source to implement
4 emergency involuntary procedures such as seclusion and restraint.

5 Subchapter 4. Confidentiality

6 § 7012. DISCLOSURE OF INFORMATION

7 (a) All certificates, applications, records, and reports, other than an order of
8 a court made for the purposes of this part of this title, and directly or indirectly
9 identifying a patient or former patient or an individual whose hospitalization or
10 care has been sought or provided under this part, together with clinical
11 information relating to such persons shall be kept confidential and shall not be
12 disclosed by any person except insofar:

13 (1) as the individual identified, the individual's health care agent under
14 section 5264 of this title, or the individual's legal guardian, if any (or, if the
15 individual is an unemancipated minor, his or her parent or legal guardian),
16 shall consent in writing; or

17 (2) as disclosure may be necessary to carry out any of the provisions of
18 this part; or

19 (3) as a court may direct upon its determination that disclosure is
20 necessary for the conduct of proceedings before it and that failure to make
21 disclosure would be contrary to the public interest.

1 (b) Nothing in this section shall preclude disclosure, upon proper inquiry,
2 of information concerning a medical condition to the individual's family,
3 clergy, physician, attorney, the individual's health care agent under section
4 5264 of this title, a person to whom disclosure is authorized by a validly
5 executed durable power of attorney for health care, or to an interested party.

6 (c) Any person violating this section shall be fined not more than \$2,000.00
7 or imprisoned for not more than one year, or both.

8 (d) Nothing in 12 V.S.A. § 1612(a) shall affect the provisions of this
9 section.

10 (e) Mandatory disclosure to home providers.

11 (1) With the written consent of the individual or his or her guardian, an
12 agency designated by the Department of Disabilities, Aging, and Independent
13 Living or of Mental Health to provide developmental disability and mental
14 health services shall disclose all relevant information, in writing, to a potential
15 home care provider for that individual so that the provider has the opportunity
16 to make a fully informed decision prior to the placement.

17 (2) If the individual or his or her guardian does not consent to the
18 disclosure, the placement will not occur unless the home care provider agrees
19 in writing to the placement, absent disclosure.

20 (3) A home care provider must furnish to any person providing respite
21 care the individual's relevant information obtained from the agency designated

1 by the Department of Disabilities, Aging, and Independent Living or of Health
2 to provide developmental disability and mental health services, as provided in
3 this subsection. Where the home care provider has agreed to placement
4 without disclosure, the home care provider shall inform the respite provider of
5 that fact.

6 (4) Home care and respite providers, whether or not they agree to a
7 placement, shall be subject to the confidentiality and disclosure requirements
8 of subsections (a), (b), and (c) of this section.

9 (5) Any written disclosure of relevant information under this subsection
10 shall also include notice of the confidentiality and disclosure requirements of
11 this section.

12 (6) Where the individual has consented to disclosure, an agency
13 designated by the Department of Disabilities, Aging, and Independent Living
14 or of Mental Health to provide developmental disability and mental health
15 services shall provide updated information regarding the individual to the
16 home care provider.

17 § 7013. CLINICAL RESOURCE MANAGEMENT INFORMATION

18 PRIVACY

19 The clinical resource management system as described in 7452 of this title
20 shall be designed to ensure that to the extent patients' protected health
21 information pertaining to any identifiable person that is otherwise confidential

1 by state or federal law is used within the clinical resource management system,
2 the health information exchange privacy standards and protocols as described
3 in subsection 9351(e) of this title shall be followed.

4 Sec. 2. 18 V.S.A. chapter 172 is added to read:

5 CHAPTER 172. THE COMMISSIONER OF MENTAL HEALTH

6 Subchapter 1. Duties of the Commissioner

7 § 7151. COMMISSIONER OF MENTAL HEALTH; APPOINTMENT;

8 QUALIFICATIONS

9 The Secretary shall appoint a Commissioner of Mental Health, as provided
10 in 3 V.S.A. § 3051, who shall be a mental health care professional who has had
11 educational and practical experience in the field of mental health.

12 § 7152. RECORDS AND REPORTS

13 The Commissioner shall keep records of all commitments and admissions to
14 a hospital and shall secure compliance with the laws relating thereto. The
15 Commissioner shall report biennially to the Governor and the General
16 Assembly on the condition of hospitals, on the physical and medical treatment
17 of patients therein, on the need for community services to former patients and
18 those mentally ill persons not hospitalized, and on any other matters the
19 Commissioner deems advisable.

1 § 7153. ACCOUNTS OF RECEIPTS AND EXPENDITURES

2 The Commissioner shall cause to be kept a true and just account of all
3 receipts and expenditures. His or her report shall contain the account together
4 with a tabulated statement of the work done by the State Hospital during the
5 preceding two years.

6 § 7154. PERSONAL NEEDS OF PATIENT

7 The Commissioner shall make any necessary arrangements to ensure:

8 (1) that no patient is discharged or granted a conditional release from a
9 hospital without suitable clothing; and

10 (2) that any indigent patient discharged or granted a conditional release
11 is furnished suitable transportation for his or her return home and an amount of
12 money as may be prescribed by the head of the hospital to enable the patient to
13 meet his or her immediate needs.

14 § 7155. ELECTROCONVULSIVE THERAPY

15 The Commissioner shall oversee the use of electroconvulsive therapy in
16 Vermont and may adopt rules to govern the practice of electroconvulsive
17 therapy. The Commissioner's duties shall include:

18 (1) establishment of a uniform informed consent process, forms, and
19 materials;

20 (2) oversight and monitoring of all facilities administering
21 electroconvulsive therapy; and

1 (3) the collection of statistical data on the use of electroconvulsive
2 therapy from all treating facilities.

3 § 7156. MENTAL HEALTH ADVISOR

4 The Commissioner, upon the request of the Commissioner of Motor
5 Vehicles, shall designate an appropriate professional member of the
6 Department to serve as advisor to the Commissioner of Motor Vehicles on the
7 mental health aspects of the licensing of motor vehicle operators.

8 Subchapter 2. Administrative Authority of the Commissioner

9 § 7157. ADMINISTRATIVE POWERS

10 Except insofar as this part of this title specifically confers certain powers,
11 duties, and functions upon others, the Commissioner shall be charged with the
12 Department's administration. The Commissioner may:

13 (1) with the approval of the Governor, organize the Department,
14 including the creation, rearrangement, and abolition of divisions and lesser
15 units and control and coordinate services as to most efficiently carry out the
16 purposes of this part;

17 (2) adopt, amend, repeal, and enforce rules and regulations not
18 inconsistent with this part as are reasonably necessary for its operation;

19 (3) prescribe the form of applications, records, reports, and medical
20 certificates required by the statutes, and the information to be contained therein

1 and to supply them to physicians and the Probate Division of the Superior

2 Courts;

3 (4) require reports from the head of a hospital or other institution

4 concerning the care of patients;

5 (5) establish rates, charges, and fees for the care of patients in hospitals
6 and determine ability to pay, liability for payments, and amounts to be paid and
7 bill for and collect those amounts with the aid of the Attorney General;

8 (6) receive gifts and bequests of real and personal estate made for the
9 use and benefit of any state hospital, and invest any monies so received in safe
10 interest-bearing securities in the corporate name of the hospital; and

11 (7) delegate to any officer or agency of Vermont any of the duties and
12 powers imposed upon him or her by this part of this title. The delegation of
13 authority and responsibility shall not relieve the Commissioner of
14 accountability for the proper administration of this part of this title.

15 § 7158. CONTRACTS

16 The Commissioner, with the approval of the Governor, may enter into
17 contracts with the federal government or its agencies for the care, treatment, or
18 observation of those mentally ill entitled to support by the federal government
19 or agency as the Commissioner may deem desirable. The receipts from those
20 contracts shall be paid by the Superintendent to the State Treasurer to be
21 applied to the General Fund.

1 § 7159. PROPERTY IN TRUST

2 The Commissioner may take and hold in trust for the State any grant or
3 devise of land or donation or bequest of money, or other personal property, to
4 be applied to the maintenance of mentally ill persons.

5 Subchapter 3. Authority of the Commissioner in Relation to
6 Community Services

7 § 7160. POWERS RELATED TO COMMUNITY SERVICES

8 The Commissioner may:

9 (1) supervise the operation of community mental health units;

10 (2) plan and coordinate the development of community services which
11 are needed to assist children and adolescents with or at risk for a severe
12 emotional disturbance and individuals with mental illness to become as
13 financially and socially independent as possible. These services shall consist
14 of residential, vocational, rehabilitative, day treatment, inpatient, outpatient,
15 and emergency services, as well as client assessment, prevention, family, and
16 individual support services and such other services as may be required by
17 federal law or regulations;

18 (3) contract with community mental health centers to assure that
19 children and adolescents with or at risk for a severe emotional disturbance or
20 individuals with mental illness can receive information, referral, and assistance

1 in obtaining those community services which they need and to which they are
2 lawfully entitled;

3 (4) ensure the provision of services to children and adolescents with or
4 at risk for a severe emotional disturbance in coordination with the
5 Commissioner of Education and the Commissioner for Children and Families
6 in accordance with the provisions of 33 V.S.A. chapter 43;

7 (5) ensure the development of community-based prevention and early
8 intervention services for children and adults and ensure the coordination of
9 these services throughout all parts of the public and private health care delivery
10 systems;

11 (6) ensure the development of chronic care services, addressing mental
12 health and substance abuse, for children and adults and ensure the coordination
13 of these services with other chronic care initiatives, including the Blueprint for
14 Health, and the care coordination and case management programs of the
15 Department of Vermont Health Access;

16 (7) ensure the coordination of mental health, physical health, and
17 substance abuse services provided by the public and private health care
18 delivery systems;

19 (8) ensure the coordination of public mental health and substance abuse
20 services with mental health and substance abuse services offered through the

1 private health care delivery system, including services offered by primary care
2 physicians; and

3 (9) oversee and seek to have patients receive treatment in secure
4 residential recovery facilities as defined in section 7002 of this title.

5 § 7161. STATE AID; FEES

6 (a) Upon application to the Commissioner by a designated community
7 mental health and developmental disability agency, the commissioner of the
8 appropriate department may grant to the agency funds to be used for carrying
9 out its mental health and developmental disability services. Such grant of
10 funds shall be based on a program plan and program budget developed by the
11 agency and submitted to and approved by the Commissioner or
12 Commissioners. The budget plan must indicate cost per unit of service and
13 anticipated fees for services, and must represent a balanced plan of anticipated
14 receipts and expenditures.

15 (b) State funds shall not be distributed to a community mental health
16 agency unless the Commissioner determines that the agency has a reasonable
17 cost per service unit and has established a uniform and reasonable schedule of
18 fees for services provided to those persons who can afford to pay. A policy
19 statement regarding fees, instructions for payment of fees, and fee collection
20 procedures to be used by the agency shall be prepared and updated annually.

1 (c) Nothing in this section should be interpreted to preclude anyone from
2 receiving the services of the agencies due to an inability to pay nor to preclude
3 an agency from bringing an action as provided by law to recover fees due.

4 Subchapter 4. Authority of the Commissioner in Relation to
5 Hospital Services

6 § 7162. POWERS RELATED TO HOSPITAL SERVICES

7 The Commissioner may:

8 (1) designate, control, and supervise the property, affairs, and operation
9 of hospitals and institutions equipped and otherwise qualified to provide
10 inpatient care and treatment for individuals who are mentally ill;

11 (2) supervise the care and treatment of individuals within his or her
12 custody;

13 (3) provide for the hospitalization of mentally ill patients in designated
14 hospitals or institutions of Vermont or negotiate and enter into contracts which
15 shall incorporate safeguards consistent with this part of this title with any
16 hospital or institution for the care and treatment of patients in any other state;

17 (4) visit each hospital or institution and review methods of care for all
18 patients;

19 (5) investigate complaints made by a patient, his or her attorney, or an
20 interested party on his or her behalf; and

1 (6) contract with accredited educational or health care institutions for
2 psychiatric services at the Vermont State Hospital or its successor in interest.

3 § 7163. INTRASTATE TRANSFERS

4 The Commissioner may authorize the transfer of patients between the
5 Vermont State Hospital or its successor in interest and designated hospitals if
6 the Commissioner determines that it would be consistent with the medical
7 needs of the patient to do so. Whenever a patient is transferred, written notice
8 shall be given to the patient's legal guardian or agent, if any, and any other
9 person with the consent of the patient. In all such transfers, due consideration
10 shall be given to the relationship of the patient to his or her family, legal
11 guardian, or friends so as to maintain relationships and encourage visits
12 beneficial to the patient. Due consideration shall also be given to the
13 separation of functions and to the divergent purposes of the Vermont State
14 Hospital or its successor in interest and designated hospitals. No patient may
15 be transferred to a correctional institution without the order of a court of
16 competent jurisdiction. No patient may be transferred to a designated hospital
17 outside the no refusal system unless the head of the hospital or his or her
18 designee first accepts the patient.

19 § 7164. INTERSTATE TRANSFERS

20 (a) The transfer of nonresident patients to out-of-state facilities shall be
21 governed by the Interstate Compact on Mental Health.

1 (b) The transfer of nonresident patients from an out-of-state institution or
2 hospital to a hospital in Vermont for the purpose of being near relatives or
3 friends shall be in the discretion of the Commissioner who shall take into
4 consideration the relationship of the patient to his or her family, legal guardian,
5 or friends in order to maintain those relationships and encourage visits
6 beneficial to the patient.

7 § 7165. TRANSFERS TO FEDERAL FACILITIES

8 Upon receipt of a certificate from an agency of the United States that
9 accommodations are available for the care of any individual hospitalized under
10 this part of this title, and that the individual is eligible for care or treatment in a
11 hospital or institution of that agency, the Commissioner may cause his or her
12 transfer to that agency for hospitalization. The judge who ordered the
13 individual to be hospitalized, and the attorney, guardian, if any, spouse, and
14 parent or parents, or if none be known, an interested party, in that order, shall
15 be notified immediately of the transfer by the Commissioner. No person may
16 be transferred to an agency of the United States if he or she is confined
17 pursuant to conviction of any felony or misdemeanor, or if he or she has been
18 acquitted of a criminal charge solely on the ground of mental illness unless,
19 prior to transfer, the judge who originally ordered hospitalization of such
20 person enters an order for the transfer after appropriate motion and

1 hearing. Any person so transferred shall be deemed to be hospitalized by that
2 agency pursuant to the original order of hospitalization.

3 Sec. 3. 18 V.S.A. chapter 191 is amended to read:

4 CHAPTER ~~191~~ 176. SUPPORT AND EXPENSE

5 § ~~8101~~ 7351. LIABILITY

6 * * *

7 (c) The ~~commissioner~~ Commissioner shall, at the time of the
8 hospitalization of a patient, investigate the ability to pay of persons liable
9 under subsection (a) of this section, and may require from the liable persons
10 sworn statements of income, resources, expenses, and family size. The
11 ~~commissioner~~ Commissioner shall notify, within 30 days of the date of
12 admission, in writing, each liable person of the amount of his or her liability
13 and the fact that liability commences on the date of admission. The notice
14 shall include a statement of the right of the liable person to an appeal under
15 section ~~8111~~ 7358 of this title.

16 * * *

17 § ~~8102~~ 7352. CHARGES FOR CARE OR TREATMENT

18 As used in section ~~8101~~ 7351 of this title, “charge for the care or treatment”
19 of a patient means an amount not exceeding the actual cost of the care and
20 treatment. Actual cost shall mean either the rate provided for by a contract

1 lawfully entered into under this part of this title, or, in the absence of a
2 contract, a per diem rate as determined under section ~~8405~~ 7354 of this title.

3 § ~~8403~~ 7353. VOLUNTARY PAYMENTS

4 The ~~commissioner~~ Commissioner may accept from any interested party any
5 payment for the care and treatment of any patient, even if such payment is not
6 required by an order of the ~~commissioner~~ Commissioner under section ~~8404~~
7 7351 of this title, so long as the total payments received under section ~~8404~~
8 7351 and this section do not exceed the actual cost of care and treatment.

9 § ~~8405~~ 7354. COMPUTATION OF CHARGE FOR CARE AND
10 TREATMENT

11 * * *

12 § ~~8406~~ 7355. PERSONS IN ARREARS

13 At least every six months, the ~~commissioner~~ Commissioner shall ascertain
14 those liable persons whose payments to the ~~state~~ State are in arrears, the
15 amount of the arrearage, and the amount of income or resources, excluding an
16 estate of less than \$1,500.00, from which any amount owed the ~~state~~ State for
17 care and treatment, as determined under section ~~8404~~ 7351 of this title, can be
18 collected.

19 § ~~8408~~ 7356. CLAIM ALLOWED AGAINST ESTATE

20 * * *

1 § ~~8440~~ 7357. PROSECUTION OF CLAIMS

2 * * *

3 § ~~8444~~ 7358. APPEALS

4 A person aggrieved by an act or decision of the ~~commissioner~~
5 Commissioner relating to the charge for the care and treatment of a patient or
6 to rates of payment established in accordance with section ~~8404~~ 7351 of this
7 title shall have an immediate right of appeal under the provisions for contested
8 cases in 3 V.S.A. chapter 25.

9 Sec. 4. 18 V.S.A. chapter 178 is added to read:

10 CHAPTER 178. SERVICES AND SYSTEM OF CARE

11 Subchapter 1. State Services

12 § 7451. SYSTEM OF CARE

13 The Commissioner of Mental Health shall coordinate a geographically
14 diverse system and continuum of mental health care throughout the State that
15 shall include at least the following:

16 (1) Comprehensive and coordinated community services, including
17 prevention, to serve children, families, and adults at all stages of mental illness.

18 (2) Peer services, which may include:

19 (A) A warm line.

20 (B) Peer-provided transportation services.

21 (C) Peer-supported crisis services.

1 (D) Peer-supported hospital diversion services.

2 (3) Alternative treatment options for individuals seeking to avoid or
3 reduce reliance on medications.

4 (4) Recovery-oriented housing programs.

5 (5) Intensive residential recovery facilities.

6 (6) Appropriate and adequate psychiatric inpatient capacity for
7 voluntary patients.

8 (7) Appropriate and adequate psychiatric inpatient capacity for
9 involuntary inpatient treatment services, including patients receiving treatment
10 through court order from a civil or criminal court.

11 (8) A secure residential recovery facility.

12 § 7452. CLINICAL RESOURCE MANAGEMENT AND OVERSIGHT

13 The Commissioner of Mental Health, in consultation with health care
14 providers as defined in section 9432 of this title, including designated
15 hospitals, designated agencies, individuals with mental health conditions, and
16 other stakeholders, shall design and implement a clinical resource management
17 system that ensures the highest quality of care and facilitates long-term,
18 sustained recovery for individuals in the custody of the Commissioner.

19 (1) For the purpose of coordinating the movement of individuals across
20 the continuum of care to the most appropriate services, the clinical resource
21 management system shall:

1 (A) ensure that all individuals in the care and custody of the
2 Commissioner receive the highest quality and least restrictive care necessary;

3 (B) develop a process for receiving direct patient input on treatment
4 opportunities and the location of services;

5 (C) use state-employed clinical resource management coordinators to
6 work collaboratively with community partners, including designated agencies,
7 hospitals, individuals with mental health conditions, and peer groups, to ensure
8 access to services for individuals in need. Clinical resource management
9 coordinators or their designees shall be available 24 hours a day, seven days a
10 week to assist emergency service clinicians in the field to access necessary
11 services;

12 (D) use an electronic, web-based bed board to track in real time the
13 availability of bed resources across the continuum of care;

14 (E) use specific level-of-care descriptions, including admission,
15 continuing stay, and discharge criteria, and a mechanism for ongoing
16 assessment of service needs at all levels of care;

17 (F) specify protocols for medical clearance, bed location,
18 transportation, information sharing, census management, and discharge or
19 transition planning;

20 (G) coordinate transportation resources so that individuals may
21 access the least restrictive mode of transport consistent with safety needs; and

1 (H) review the options for the use of ambulance transport, with
2 security as needed, as the least restrictive mode of transport consistent with
3 safety needs required pursuant to section 7758 of this title.

4 (2) For the purpose of maintaining the integrity and effectiveness of the
5 clinical resource management system, the Department of Mental Health shall:

6 (A) require a designated team of clinical staff to review the treatment
7 received and clinical progress made by individuals within the Commissioner's
8 custody;

9 (B) coordinate care across the mental and physical health care
10 systems as well as ensure coordination within the Agency of Human Services,
11 particularly the Department of Corrections, the Department of Health's alcohol
12 and drug abuse programs, and the Department of Disabilities, Aging, and
13 Independent Living;

14 (C) coordinate service delivery with Vermont's Blueprint for Health
15 and health care reform initiatives, including the Health Information Exchange
16 as defined in section 9352 of this title and the Health Benefit Exchange as
17 defined in 33 V.S.A. § 1803;

18 (D) use quality indicators, manageable data requirements, and quality
19 improvement processes to monitor, evaluate, and continually improve the
20 outcomes for individuals and the performance of the clinical resource
21 management system;

1 (E) actively engage stakeholders and providers in oversight
2 processes; and

3 (F) provide mechanisms for dispute resolution.

4 Subchapter 2. Community Mental Health Agencies

5 § 7453. PURPOSE

6 The purpose of this subchapter is to expand community mental health and
7 developmental disability services; to encourage participation in such a program
8 by persons in local communities; to obtain better understanding of the need for
9 community mental health and developmental services; to authorize funding for
10 the program by state aid, local financial support, and direct payment by clients
11 who have the ability to pay; and to provide services to mentally ill persons,
12 developmentally disabled persons, and children or adolescents with a severe
13 emotional disturbance.

14 § 7454. DESIGNATION OF AGENCIES TO PROVIDE MENTAL

15 HEALTH AND DEVELOPMENTAL DISABILITY SERVICES

16 (a) Except as otherwise provided in this part of this title, the Commissioner
17 of Mental Health and the Commissioner of Disabilities, Aging, and
18 Independent Living shall, within the limits of funds designated by the General
19 Assembly for this purpose, ensure that community services to mentally ill and
20 developmentally disabled persons throughout the State are provided through
21 designated community mental health agencies. The Commissioners shall

1 designate public or private nonprofit agencies to provide or arrange for the
2 provision of these services.

3 (b) Within the limits of available resources, each designated community
4 mental health or developmental disability agency shall plan, develop, and
5 provide or otherwise arrange for those community mental health or
6 developmental disability services that are not assigned by law to the exclusive
7 jurisdiction of another agency and which are needed by and not otherwise
8 available to persons with mental illness or developmental disabilities or
9 children and adolescents with a severe emotional disturbance in accordance
10 with the provisions of 33 V.S.A. chapter 43 who reside within the geographic
11 area served by the agency.

12 § 7455. LOCAL COMMUNITY SERVICES PLAN

13 Each designated community mental health and developmental disability
14 agency shall determine the need for community mental health and
15 developmental disability services within the area served by the agency and
16 shall thereafter prepare a local community services plan which describes the
17 methods by which the agency will provide those services. The plan shall
18 include a schedule for the anticipated provision of new or additional services
19 and shall specify the resources which are needed by and available to the
20 agency to implement the plan. The community services plan shall be reviewed
21 annually.

1 § 7456. BOARDS OF DIRECTORS OF NONPROFIT CORPORATIONS
2 DESIGNATED AS COMMUNITY MENTAL HEALTH AND
3 DEVELOPMENTAL DISABILITY AGENCIES

4 (a) The board of a nonprofit corporation that is designated by the
5 Commissioner of Mental Health or of Disabilities, Aging, and Independent
6 Living to be a community mental health and developmental disability agency
7 shall be representative of the demographic makeup of the area served by the
8 agency. A majority of the members of the board shall be composed of both
9 individuals who are or were eligible to receive services from an agency
10 because of their disability, and family members of an individual who is or was
11 eligible to receive services because of his or her disability. The board
12 president shall survey board members on an annual basis and shall certify to
13 the commissioner that the composition of the board is comprised of a majority
14 as required by this section. This composition of the board shall be confirmed
15 by the organization's annual independent audit. Annually, the board shall
16 determine whether or not this disclosure shall be made available to the public
17 on request. The board shall have overall responsibility and control of the
18 planning and operation of the community mental health agency.

19 (b) The board shall direct the development of the local community services
20 plan and shall consult with the Commissioners, with consumers, with other
21 organizations representing mentally ill, persons with developmental

1 disabilities, and children and adolescents with a severe emotional disturbance,
2 and with other governmental or private agencies that provide community
3 services to the clients served by the agency to determine the needs of the
4 community for mental health and developmental disability services, and the
5 priority need for service. The plan shall encourage utilization of existing
6 agencies, professional personnel, and public funds at both state and local levels
7 in order to improve the effectiveness of mental health and developmental
8 disability services and to prevent unnecessary duplication of expenditures.

9 § 7457. POWERS OF THE COMMISSIONERS

10 (a) If the Commissioner after discussion with the board of a community
11 mental health and developmental disability agency determine that the local
12 community services plan required by section 7455 of this title is inadequate to
13 meet the needs of persons with mental illness or with developmental
14 disabilities or children and adolescents with a severe emotional disturbance in
15 accordance with the provisions of 33 V.S.A. chapter 43 in the area served by a
16 mental health and developmental disability agency or that an agency has, for
17 reasons other than lack of resources, failed or refused to implement an
18 otherwise adequate plan, the Commissioners shall take one or more of the
19 following steps:

20 (1) Offer technical assistance to the agency.

1 (2) Actively seek out and designate another agency to provide the
2 needed services.

3 (3) Directly provide or arrange the needed services if it appears that the
4 services will not otherwise be available within a reasonable period of time.
5 The remedies specified in this subsection shall be in addition to any other
6 rights and remedies which are available to the Commissioner under state or
7 federal law.

8 (b) Until May 1, 1998, no agency which has been designated as a
9 community mental health agency may lose its designation without first being
10 provided with notice and an opportunity for hearing in accordance with the
11 provisions of 3 V.S.A. §§ 809–813. After May 1, 1998, no agency may lose
12 its designation except in accordance with new rules adopted for that purpose
13 under the provisions of this subsection. Notwithstanding any other provisions
14 to the contrary in 3 V.S.A. chapter 25, the Commissioner shall, in consultation
15 with the designated provider system and consumer groups, develop proposed
16 rules setting forth the standards and procedures for designation, redesignation,
17 and loss of designation, and provide for six months' notice of intent to revoke
18 an agency's designation. The proposed rules shall also provide standards with
19 measurable performance-based criteria and a streamlined appeals process. On
20 or before December 31, 1997, the Commissioner shall file and hold public
21 hearings on the proposed rules as provided in 3 V.S.A. §§ 838, 839, and 840 in

1 accordance with 3 V.S.A. chapter 25. The Commissioner shall file the final
2 proposed rules with the General Assembly on or before January 15, 1998.
3 Unless disapproved by act of the General Assembly on or before April 1, 1998,
4 the Commissioner may adopt the rules by filing with the Secretary of State,
5 which rules shall take effect on May 1, 1998.

6 (c) The board of directors of a community mental health and
7 developmental disability agency will be given a six-month notice of any intent
8 on the part of the Commissioners to terminate its designated status. The
9 Commissioners shall provide a written notice which outlines the
10 performance-based rationale associated with such intent. The board of
11 directors shall have six months to review the Commissioners' stated concerns
12 and implement a corrective action plan. The board of directors shall also be
13 informed, in writing, of current standards and procedures regarding appeal
14 processes.

15 § 7458. CONTRACTS WITH NONDESIGNATED AGENCIES

16 The Commissioners of the Departments of Mental Health and of
17 Disabilities, Aging, and Independent Living may enter into agreements with
18 local community mental health and developmental disability agencies or with
19 any public or private agency for the purpose of establishing specialized
20 services which are needed by persons with mental illness or with
21 developmental disabilities or children and adolescents with a severe emotional

1 disturbance and are not available from designated community mental health
2 agencies.

3 § 7459. MINIMUM PROGRAM STANDARDS AND OTHER

4 REGULATIONS

5 (a) The Commissioners of the Departments of Mental Health and of
6 Disabilities, Aging, and Independent Living shall establish minimum program
7 standards for services provided by community mental health and
8 developmental disability agencies. Minimum program standards shall specify
9 the basic activities and resources which are necessary for the implementation
10 of such programs.

11 (b) The procedure for establishing such standards shall be in accordance
12 with 3 V.S.A. chapter 25.

13 Subchapter 3. Psychiatric Hospitals

14 § 7460. AUTHORITY TO RECEIVE PATIENTS

15 The head of a hospital which has been officially designated by the
16 Commissioner may receive therein for observation, diagnosis, care, and
17 treatment any individual whose admission is sought on proper application.

18 § 7461. CONTROL AND TREATMENT OF PATIENTS

19 A person admitted to a hospital shall be subject to the control and treatment
20 of the head of the hospital and the Board until his or her condition warrants his

1 or her release, or until he or she has been lawfully removed or otherwise
2 discharged.

3 § 7462. APPLICATION FOR VOLUNTARY ADMISSION

4 (a) Any person 14 years of age or over may apply for voluntary admission
5 to a designated hospital for examination and treatment.

6 (b) Before the person may be admitted as a voluntary patient, he or she
7 shall give his or her consent in writing on a form adopted by the Department.
8 The consent shall include a representation that the person understands that his
9 or her treatment will involve inpatient status, that he or she desires to be
10 admitted to the hospital, and that he or she consents to admission voluntarily,
11 without any coercion or duress.

12 (c) If the person is under 14 years of age, he or she may be admitted as a
13 voluntary patient if he or she consents to admission, as provided in subsection
14 (b) of this section, and if a parent or guardian makes written application.

15 § 7463. VISITS

16 (a) The head of a hospital may grant a visit permit of not more than 30 days
17 to any patient under his or her charge.

18 (b) The granting and revocation of visits shall be made in accordance with
19 rules and procedures adopted by the head of the hospital.

1 § 7464. CONDITIONAL DISCHARGES

2 (a) The Board or the head of a hospital may conditionally discharge from a
3 hospital any patient who may be safely and properly cared for in a place other
4 than the hospital.

5 (b) A conditional discharge may extend for a term of six months, but shall
6 not exceed 60 days unless the head of the hospital determines that a longer
7 period will materially improve the availability of a program of treatment which
8 is an alternative to hospitalization.

9 (c) Unless sooner revoked or renewed, a conditional discharge shall
10 become absolute at the end of its term.

11 (d) A conditional discharge may be granted subject to the patient's
12 agreement to participate in outpatient, after-care, or follow-up treatment
13 programs, and shall be subject to such other conditions and terms as are
14 established by the granting authority.

15 (e) Each patient granted a conditional discharge shall be provided, so far as
16 practicable and appropriate, with continuing treatment on an outpatient or
17 partial hospitalization basis.

18 (f) Each patient granted a conditional discharge shall be given a written
19 statement of the conditions of his or her release, the violation of which can
20 cause revocation.

1 (g) A conditional discharge may be renewed by the granting authority at
2 any time before it becomes absolute if the head of a hospital first determines
3 that such renewal will substantially reduce the risk that the patient will become
4 a person in need of treatment in the near future.

5 § 7465. REVOCATION OF CONDITIONAL DISCHARGE

6 (a) The Board or the head of the hospital may revoke a conditional
7 discharge at any time before that discharge becomes absolute if the patient fails
8 to comply with the conditions of the discharge.

9 (b) A revocation by the Board or the head of the hospital shall authorize the
10 return of the patient to the hospital and shall be sufficient warrant for a law
11 enforcement officer or mental health professional to take the patient into
12 custody and return him or her to the hospital from which he or she was
13 conditionally discharged.

14 (c) Immediately upon his or her return to the hospital, the patient shall be
15 examined by a physician who shall orally explain to the patient the purpose of
16 the examination and the reasons why the patient was returned to the hospital.

17 (d) If the examining physician certifies in writing to the head of the
18 hospital that, in his or her opinion, the patient is a person in need of treatment,
19 setting forth the recent and relevant facts supporting this opinion, the
20 revocation shall become effective and the patient shall be readmitted to the
21 hospital. If the examining physician does not so certify, the revocation shall be

1 cancelled and the patient shall be returned to the place from which he or she
2 was taken.

3 (e) If the patient is readmitted to the hospital, he or she may apply
4 immediately for a judicial review of his or her admission, and he or she shall
5 be given a written notice of this right and of his or her right to legal counsel.

6 § 7466. NOTICE OF HOSPITALIZATION AND DISCHARGE

7 Whenever a patient has been admitted to a hospital other than upon his or
8 her own application, the head of the hospital shall immediately notify the
9 patient's legal guardian, spouse, parent or parents, or nearest known relative or
10 interested party, if known. If the involuntary hospitalization or admission was
11 without court order, notice shall also be given to the superior court judge for
12 the family division of the superior court in the unit wherein the hospital is
13 located. If the hospitalization or admission was by order of any court, the head
14 of the hospital admitting or discharging an individual shall forthwith make a
15 report thereof to the Commissioner and to the court which entered the order for
16 hospitalization or admission.

17 § 7467. NOTICE OF RIGHTS

18 The head of a hospital shall provide reasonable means and arrangements,
19 including the posting of excerpts from relevant statutes, for informing patients
20 of their right to discharge and other rights and for assisting them in making and
21 presenting requests for discharge.

1 § 7468. ADMINISTRATIVE REVIEW

2 The head of the hospital and the Board shall cause the condition of every
3 patient to be reviewed as regularly as practicable, but not less often than every
4 six months, and whenever the head of a hospital or the board certifies that the
5 patient is not a patient in need of further treatment, the patient shall be
6 discharged. If requested by the patient, all hearings by the board on the issue
7 of granting a discharge shall be on reasonable notice to the patient's attorney
8 who shall be afforded an opportunity to attend. In the absence of any attorney,
9 the board shall notify the criminal division of the superior court and an
10 attorney shall be appointed as provided in section 7754 of this title.

11 § 7469. ADMINISTRATIVE DISCHARGE

12 (a) The head of the hospital may at any time discharge a voluntary or
13 judicially hospitalized patient whom he or she deems clinically suitable for
14 discharge.

15 (b) The head of the hospital shall discharge a judicially hospitalized patient
16 when the patient is no longer a patient in need of further treatment. When a
17 judicially hospitalized patient is discharged, the head of the hospital shall
18 notify the applicant, the certifying physician, the family division of the
19 superior court, and anyone who was notified at the time the patient was
20 hospitalized.

1 (c) A person responsible for providing treatment other than hospitalization
2 to an individual ordered to undergo a program of alternative treatment under
3 section 7658 or 7662 of this title may terminate the alternative treatment to the
4 individual if the provider of this alternative treatment considers the individual
5 clinically suitable for termination of treatment. Upon termination of
6 alternative treatment, the family division of the superior court shall be so
7 notified by the provider of the alternative treatment.

8 § 7470. MECHANICAL RESTRAINTS

9 Mechanical restraints shall not be applied to a patient unless it is determined
10 by the head of the hospital or his or her designee to be required by the medical
11 needs of the patient or the hospital. Every use of a mechanical restraint and the
12 reasons therefor shall be made a part of the clinical record of the patient under
13 the signature of the head of the hospital or his or her designee.

14 § 7471. RECORD OF RESTRICTIONS

15 Any limitation imposed by the head of a hospital on the exercise of civil
16 rights by a patient and the reasons for the limitation shall be made a part of the
17 clinical record of the patient.

18 § 7472. SURGICAL OPERATIONS

19 If the superintendent finds that a patient supported by the State requires a
20 surgical operation or that a surgical operation would promote the possibility of
21 his or her discharge from the hospital, the superintendent, with the consent of

1 the patient, his or her attorney or his or her legally appointed guardian, if any,
2 or next of kin, if any be known, may make the necessary arrangements with
3 some surgeon and hospital for the operation. The expense of the operation
4 shall be borne by the State in the same proportion as the patient is supported by
5 the State.

6 § 7473. REPORTABLE ADVERSE EVENTS

7 An acute inpatient hospital, an intensive residential recovery facility, a
8 designated agency, or a secure residential facility shall report to the
9 Department of Mental Health instances of death or serious bodily injury to
10 individuals with a mental health condition in the custody of the Commissioner.

11 Subchapter 4. State Hospital

12 § 7474. EXTRAMURAL WORK

13 Any hospital or training school in the State dealing with mental health may
14 do, or procure to be done, extramural work in the way of prevention,
15 observation, care, and consultation with respect to mental health.

16 § 7475. CANTEENS

17 The Chief Executive Officer of the Vermont State Hospital or its successor
18 in interest may conduct a canteen or commissary, which shall be accessible to
19 patients, employees, and visitors of the Vermont State Hospital or its successor
20 in interest at designated hours and shall be operated by employees of the
21 Hospital. A revolving fund for this purpose is authorized. The salary of an

1 employee of the Hospital shall be charged against the canteen fund. Proceeds
2 from sales may be used for the operation of the canteen and the benefit of the
3 patients and employees of the Hospital under the direction of the Chief
4 Executive Officer and subject to the approval of the Commissioner. All
5 balances of such funds remaining at the end of any fiscal year shall remain in
6 such fund for use during the succeeding fiscal year. An annual report of the
7 status of the funds shall be submitted to the Commissioner.

8 § 7476. SALE OF ARTICLES; REVOLVING FUND

9 (a) The superintendent of a hospital or training school may sell articles
10 made by the patients or students in the handiwork or occupational therapy
11 departments of the institution and the proceeds thereof shall be credited to a
12 revolving fund. When it is for their best interest, the superintendent may, with
13 the consent of the patients or their legal representatives, employ patients or
14 students or permit them to be employed on a day placement basis.

15 (b) The consent of the patient or the legal representative of the patient or
16 student shall, in consideration of the undertaking of the superintendent, contain
17 the further agreement that one-half the earnings of the patient or student shall
18 be credited to the personal account of the patient or student so employed at
19 interest for benefit of the patient or student and the balance shall be credited to
20 the fund. The superintendent shall hold and expend the fund for the purchase
21 of equipment and materials for the handicraft or group therapy departments

1 and for the educational and recreational welfare of the patient or student group.

2 He or she shall submit an annual report of the fund to the Commissioner.

3 Balances remaining in it at the end of a fiscal year shall be carried forward and

4 be available for the succeeding fiscal year.

5 (c) For purposes of this section, the legal representative of the patient or
6 student shall be the duly appointed guardian, the spouse, the parents, or the
7 next of kin legally responsible for the patient or student. In their absence, the
8 Commissioner shall be the legal representative.

9 Sec. 5. 18 V.S.A. chapter 180 is added to read:

10 CHAPTER 180. INITIATION OF CARE WITHOUT CONSENT

11 § 7551. CERTIFICATION OF MENTAL ILLNESS

12 A certification of mental illness by a licensed physician required by section
13 7552 of this title shall be made by a board-eligible psychiatrist, a
14 board-certified psychiatrist, or a resident in psychiatry, under penalty of
15 perjury. In areas of the State where board-eligible psychiatrists,
16 board-certified psychiatrists, or residents in psychiatry are not available to
17 complete admission certifications to the Vermont State Hospital or its
18 successor in interest, the Commissioner may designate other licensed
19 physicians as appropriate to complete certification for purposes of section 7552
20 of this title.

1 § 7552. APPLICATION FOR EMERGENCY EXAMINATION

2 (a) A person shall be admitted to a designated hospital for an emergency
3 examination to determine if he or she is a person in need of treatment upon
4 written application by an interested party accompanied by a certificate by a
5 licensed physician who is not the applicant. The application and certificate
6 shall set forth the facts and circumstances which constitute the need for an
7 emergency examination and which show that the person is a person in need of
8 treatment.

9 (b) The application and certificate shall be authority for transporting the
10 person to a designated hospital for an emergency examination, as provided in
11 section 7758 of this title.

12 (c) For the purposes of admission of an individual to a designated hospital
13 for care and treatment under this section, a head of a hospital, as provided in
14 subsection (a) of this section, may include a person designated in writing by
15 the head of the hospital to discharge the authority granted in this section. A
16 designated person must be an official hospital administrator, supervisory
17 personnel, or a licensed physician on duty on the hospital premises other than
18 the certifying physician under subsection (a) of this section.

19 § 7553. WARRANT FOR IMMEDIATE EXAMINATION

20 (a) In emergency circumstances in which a certification by a physician is
21 not available without serious and unreasonable delay, and when personal

1 observation of the conduct of a person constitutes reasonable grounds to
2 believe that the person is a person in need of treatment, and he or she presents
3 an immediate risk of serious injury to himself or others if not restrained, a law
4 enforcement officer or mental health professional may make an application,
5 not accompanied by a physician's certificate, to any district or superior judge
6 for a warrant for an immediate examination.

7 (b) The law enforcement officer or mental health professional may take the
8 person into temporary custody and shall apply to the court without delay for
9 the warrant.

10 (c) If the judge is satisfied that a physician's certificate is not available
11 without serious and unreasonable delay, and that probable cause exists to
12 believe that the person is in need of an immediate examination, he or she may
13 order the person to submit to an immediate examination at a designated
14 hospital.

15 (d) If necessary, the court may order the law enforcement officer or mental
16 health professional to transport the person to a designated hospital for an
17 immediate examination.

18 (e) Upon admission to a designated hospital, the person shall be
19 immediately examined by a licensed physician. If the physician certifies that
20 the person is a person in need of treatment, the person shall be held for an
21 emergency examination in accordance with section 7754 of this title. If the

1 physician does not certify that the person is a person in need of treatment, he or
2 she shall immediately discharge the person and cause him or her to be returned
3 to the place from which he or she was taken, or to such place as the person
4 reasonably directs.

5 § 7554. EMERGENCY EXAMINATION

6 (a) When a person is admitted to a designated hospital for an emergency
7 examination in accordance with section 7552 or 7553(e) of this title, he or she
8 shall be examined and certified by a psychiatrist as soon as practicable, but not
9 later than one working day after admission.

10 (b) If the person is admitted on an application and physician's certificate,
11 the examining psychiatrist shall not be the same physician who signed the
12 certificate.

13 (c) If the psychiatrist does not certify that the person is a person in need of
14 treatment, he or she shall immediately discharge the person and cause him or
15 her to be returned to the place from which he or she was taken or to such place
16 as the person reasonably directs.

17 (d) If the psychiatrist does certify that the person is a person in need of
18 treatment, the person's hospitalization may continue for an additional 72 hours,
19 at which time hospitalization shall terminate, unless within that period:

20 (1) the person has been accepted for voluntary admission under section
21 7462 of this title; or

1 (2) an application for involuntary treatment is filed with the appropriate
2 court under section 7651 of this title, in which case the patient shall remain
3 hospitalized pending the court's decision on the application.

4 § 7555. PRELIMINARY HEARING

5 (a) Within five days after a person is admitted to a designated hospital for
6 emergency examination, he or she may request the criminal division of the
7 superior court to conduct a preliminary hearing to determine whether there is
8 probable cause to believe that he or she was a person in need of treatment at
9 the time of his or her admission.

10 (b) The court shall conduct the hearing within three working days of the
11 filing of the request. The court shall cause timely notice of the preliminary
12 hearing to be given to the patient or his or her attorney, the hospital, and the
13 attorney for the applicant.

14 (c) The individual has the right to be present and represented by legal
15 counsel at the preliminary hearing.

16 (d) If probable cause to believe that the individual was a person in need of
17 treatment at the time of his or her admission is established at the preliminary
18 hearing, the individual shall be ordered held for further proceedings in
19 accordance with the law. If probable cause is not established, the individual
20 shall be ordered discharged from the hospital and the court shall order him or
21 her returned to the place from which he was transported or to his or her home.

1 (e) Upon a showing of need, the court may grant a reasonable continuance
2 to either the patient's attorney or the attorney for the State.

3 Sec. 6. 18 V.S.A. chapter 182 is added to read:

4 CHAPTER 182. JUDICIAL OVERSIGHT OF INVOLUNTARY CARE

5 § 7651. APPLICATION FOR INVOLUNTARY TREATMENT

6 (a) An interested party may, by filing a written application, commence
7 proceedings for the involuntary treatment of an individual by judicial process.

8 (b) The application shall be filed in the criminal division of the superior
9 court of the proposed patient's residence or, in the case of a nonresident, in any
10 district court.

11 (c) If the application is filed under section 7554 or 7660 of this title, it shall
12 be filed in the criminal division of the superior court in which the hospital is
13 located.

14 (d) The application shall contain:

15 (1) The name and address of the applicant;

16 (2) A statement of the current and relevant facts upon which the
17 allegation of mental illness and need for treatment is based. The application
18 shall be signed by the applicant under penalty of perjury.

19 (e) The application shall be accompanied by:

20 (1) A certificate of a licensed physician, which shall be executed under
21 penalty of perjury stating that he or she has examined the proposed patient

1 within five days of the date the petition is filed, and is of the opinion that the
2 proposed patient is a person in need of treatment, including the current and
3 relevant facts and circumstances upon which the physician's opinion is based.

4 (2) A written statement by the applicant that the proposed patient
5 refused to submit to an examination by a licensed physician.

6 (f) Before an examining physician completes the certificate of examination,
7 he or she shall consider available alternative forms of care and treatment that
8 might be adequate to provide for the person's needs, without requiring
9 hospitalization.

10 § 7652. NOTICE—APPOINTMENT OF COUNSEL

11 (a) When the application is filed, the court shall appoint counsel for the
12 proposed patient, and transmit a copy of the application, the physician's
13 certificate, if any, and a notice of hearing to the proposed patient, his or her
14 attorney, guardian, or any person having custody and control of the proposed
15 patient, the state's attorney, or the Attorney General, and any other person the
16 court believes has a concern for the proposed patient's welfare. A copy of the
17 notice of hearing shall also be transmitted to the applicant and certifying
18 physician.

19 (b) The notice of hearing shall set forth the date and time of the hearing and
20 shall contain a list of the proposed patient's rights at the hearing.

1 (c) If the court has reason to believe that notice to the proposed patient will
2 be likely to cause injury to the proposed patient or others, it shall direct the
3 proposed patient's counsel to give the proposed patient oral notice prior to
4 written notice under circumstances most likely to reduce likelihood of injury.

5 § 7653. PSYCHIATRIC EXAMINATION

6 As soon as practicable after notice of the commencement of proceedings is
7 given, the court on its own motion or upon the motion of the proposed patient
8 or his or her attorney or the State of Vermont shall authorize examination of
9 the proposed patient by a psychiatrist other than the physician making the
10 original certification. The examination and subsequent report or reports shall
11 be paid for by the State of Vermont. The physician shall report his or her
12 finding to the party requesting the report or to the court if it requested the
13 examination.

14 § 7654. INDEPENDENT EXAMINATION: PAYMENT

15 Whenever a court orders an independent examination by a mental health
16 professional or a qualified mental retardation professional pursuant to this title
17 or 13 V.S.A. § 4822, the cost of the examination shall be paid by the
18 Department of Disabilities, Aging, and Independent Living or of Health. The
19 mental health professional or qualified mental retardation professional may be
20 selected by the court but the Commissioner of Disabilities, Aging, and

1 Independent Living or of Mental Health may adopt a reasonable fee schedule
2 for examination, reports, and testimony.

3 § 7655. HEARING

4 (a) Upon receipt of the application, the court shall set a date for the hearing
5 to be held within 10 days from the date of the receipt of the application or 20
6 days from the date of the receipt of the application if a psychiatric examination
7 is ordered under section 7653 unless the hearing is continued by the court.

8 (b) The court may grant either party an extension of time for up to seven
9 days for good cause.

10 (c) The hearing shall be conducted according to the Rules of Evidence
11 applicable in civil actions in the criminal division of the superior courts of the
12 State, and to an extent not inconsistent with this part, the Rules of Civil
13 Procedure of the State shall be applicable.

14 (d) The applicant and the proposed patient shall have a right to appear at
15 the hearing to testify. The attorney for the State and the proposed patient shall
16 have the right to subpoena, present, and cross-examine witnesses, and present
17 oral arguments. The court may, at its discretion, receive the testimony of any
18 other person.

19 (e) The proposed patient may at his or her election attend the hearing,
20 subject to reasonable rules of conduct, and the court may exclude all persons
21 not necessary for the conduct of the hearing.

1 § 7656. APPEARANCE BY STATE; BURDEN OF PROOF

2 (a) The State shall appear and be represented by the state's attorney for the
3 county in which the hearing takes place or by the Attorney General at his or
4 her discretion.

5 (b) The State shall have the burden of proving its case by clear and
6 convincing evidence.

7 (c) The attorney for the State shall have the authority to dismiss the
8 application at any stage of the proceeding.

9 § 7657. FINDINGS; ORDER

10 (a) If the court finds that the proposed patient was not a person in need of
11 treatment at the time of admission or application or is not a patient in need of
12 further treatment at the time of the hearing, the court shall enter a finding to
13 that effect and shall dismiss the application.

14 (b) If the proposed patient is found to have been a person in need of
15 treatment at the time of admission or application and a patient in need of
16 further treatment at the time of the hearing, the court may order the person:

17 (1) hospitalized in a designated hospital;

18 (2) hospitalized in any other public or private hospital if he or she and
19 the hospital and agree; or

20 (3) to undergo a program of treatment other than hospitalization.

1 (c) Prior to ordering any course of treatment, the court shall determine
2 whether there exists an available program of treatment for the person that is an
3 appropriate alternative to hospitalization. The court shall not order
4 hospitalization without a thorough consideration of available alternatives.

5 (d) Before making its decision, the court shall order testimony by an
6 appropriate representative of a hospital, a community mental health agency, a
7 public or private entity or agency or a suitable person who shall assess the
8 availability and appropriateness for the individual of treatment programs other
9 than hospitalization.

10 (e) Prior to ordering the hospitalization of a person, the court shall inquire
11 into the adequacy of treatment to be provided to the person by the hospital.
12 Hospitalization shall not be ordered unless the hospital in which the person is
13 to be hospitalized can provide him or her with treatment that is adequate and
14 appropriate to his or her condition.

15 (f) Preference between available hospitals shall be given to the hospital that
16 is located nearest to the person's residence except when the person requests
17 otherwise or there are other compelling reasons for not following the
18 preference.

19 § 7658. ORDER; NONHOSPITALIZATION

20 (a) If the court finds that a treatment program other than hospitalization is
21 adequate to meet the person's treatment needs, the court shall order the person

1 to receive whatever treatment other than hospitalization is appropriate for a
2 period of 90 days.

3 (b) If at any time during the specified period it comes to the attention of the
4 court, either that the patient is not complying with the order or that the
5 alternative treatment has not been adequate to meet the patient's treatment
6 needs, the court may, after proper hearing:

7 (1) consider other alternatives, modify its original order, and direct the
8 patient to undergo another program of alternative treatment for the remainder
9 of the 90-day period; or

10 (2) enter a new order directing that the patient be hospitalized for the
11 remainder of the 90-day period.

12 § 7659. ORDER; HOSPITALIZATION

13 An initial order of hospitalization shall be for a period of 90 days from the
14 date of the hearing.

15 § 7660. APPLICATION FOR CONTINUED TREATMENT

16 (a) If, prior to the expiration of any order issued in accordance with section
17 7664 of this title, the Commissioner believes that the condition of the patient is
18 such that the patient continues to require treatment, the Commissioner shall
19 apply to the court for a determination that the patient is a patient in need of
20 further treatment and for an order of continued treatment.

1 (b) An application for an order authorizing continuing treatment shall
2 contain a statement setting forth the reasons for the Commissioner's
3 determination that the patient is a patient in need of further treatment, a
4 statement describing the treatment program provided to the patient, and the
5 results of that course of treatment.

6 (c) Any order of treatment issued in accordance with section 7664 of this
7 title shall remain in force pending the court's decision on the application.

8 (d) If the Commissioner seeks to have the patient receive the further
9 treatment in a secure residential recovery facility, the application for an order
10 authorizing continuing treatment shall expressly state that such treatment is
11 being sought. The application shall contain, in addition to the statements
12 required by subsection (b) of this section, a statement setting forth the reasons
13 for the Commissioner's determination that clinically appropriate treatment for
14 the patient's condition can be provided safely only in a secure residential
15 recovery facility.

16 § 7661. HEARING ON APPLICATION FOR CONTINUED TREATMENT;

17 ORDERS

18 (a) The hearing on the application for continued treatment shall be held in
19 accordance with the procedures set forth in sections 7652, 7653, 7655, and
20 7656 of this title.

1 (b) If the court finds that the patient is a patient in need of further treatment
2 and requires hospitalization, it shall order hospitalization for up to one year.

3 (c) If the court finds that the patient is a patient in need of further treatment
4 but does not require hospitalization, it shall order nonhospitalization for up to
5 one year. If the treatment plan proposed by the Commissioner for a patient in
6 need of further treatment includes admission to a secure residential recovery
7 facility, the court may at any time, on its own motion or on motion of an
8 interested party, review the need for treatment at the secure residential
9 recovery facility.

10 (d) If at any time during the period of nonhospitalization ordered under
11 subsection (c) of this section, it comes to the attention of the court that the
12 person is not complying with the order or that the alternative treatment has not
13 been adequate to meet the patient's treatment needs, the court may, after
14 proper hearing:

15 (1) consider other treatments not involving hospitalization, modify its
16 original order, and direct the patient to undergo another program of alternative
17 treatment for an indeterminate period, up to the expiration date of the original
18 order; or

19 (2) order that the patient be hospitalized, up to the expiration date of the
20 original order.

1 (e) If the court finds that the patient is not a patient in need of further
2 treatment, it shall order the patient discharged.

3 (f) This section shall not be construed to prohibit the court from issuing
4 subsequent orders after a new application is filed pursuant to section 7660 of
5 this title.

6 § 7662. EXPERT TESTIMONY

7 (a) A mental health professional testifying at hearings conducted under this
8 part may, if appropriately qualified, give opinion testimony and,
9 notwithstanding 12 V.S.A. § 1612, describe any information which he or she
10 acquired in attending the patient.

11 (b) The facts or data in the particular case, upon which an expert bases an
12 opinion or inference, may be those perceived by or made known to him or her
13 at or before the hearing. If of a type reasonably relied upon by experts in the
14 particular field in forming opinions or inferences upon the subject, the facts or
15 data need not be admissible in evidence.

16 § 7663. ORDERS; CUSTODY

17 All court orders of hospitalization, nonhospitalization, and continued
18 treatment shall be directed to the Commissioner and shall admit the patient to
19 his or her care and custody for the period specified.

1 § 7664. APPLICATION FOR DISCHARGE

2 (a) A patient who has been ordered hospitalized may apply for discharge to
3 the criminal division of the superior court within which the hospital is located.
4 A patient who has been ordered to receive treatment other than hospitalization
5 may apply for discharge to the criminal division of the superior court which
6 originally entered the order; the court in its discretion may transfer the matter,
7 for the convenience of witnesses or for other reasons, to the criminal division
8 of the superior court within which the treatment is centered or in which the
9 patient resides. Applications may be made no sooner than 90 days after the
10 issuance of an order of continued treatment or no sooner than six months after
11 the filing of a previous application under this section.

12 (b) The hearing on the application for discharge shall be held in accordance
13 with the procedures set forth in sections 7652, 7653, 7655, and 7656 of this
14 title.

15 (c) If the court finds that the applicant is not a patient in need of further
16 treatment, it shall order the patient discharged.

17 (d) If the court finds that the applicant is a patient in need of further
18 treatment, it shall deny the application and order continued treatment for an
19 indeterminate period in accordance with subsections 7661(b), (c), and (d) of
20 this title.

1 § 7665. PETITION FOR INVOLUNTARY MEDICATION

2 (a) The Commissioner may commence an action for the involuntary
3 medication of a person who is refusing to accept psychiatric medication and
4 meets any one of the following three conditions:

5 (1) has been placed in the Commissioner's care and custody pursuant to
6 section 7659 of this title or subsection 7661(b) of this title;

7 (2) has previously received treatment under an order of hospitalization
8 and is currently under an order of nonhospitalization, including a person on an
9 order of nonhospitalization who resides in a secure residential recovery
10 facility; or

11 (3) has been committed to the custody of the Commissioner of
12 Corrections as a convicted felon and is being held in a correctional facility
13 which is a designated facility pursuant to section 7669 of this title and for
14 whom the Departments of Corrections and of Mental Health have jointly
15 determined that involuntary medication would be appropriate pursuant to
16 28 V.S.A. § 907(4)(H).

17 (b) A petition for involuntary medication shall be filed in the family
18 division of the superior court in the county in which the person is receiving
19 treatment.

20 (c) The petition shall include a certification from the treating physician,
21 executed under penalty of perjury, that includes the following information:

- 1 (1) the nature of the person’s mental illness;
- 2 (2) the necessity for involuntary medication, including the person’s
3 competency to decide to accept or refuse medication;
- 4 (3) any proposed medication, including the method, dosage range, and
5 length of administration for each specific medication;
- 6 (4) a statement of the risks and benefits of the proposed medications,
7 including the likelihood and severity of adverse side-effects and its effect on:
- 8 (A) the person’s prognosis with and without the proposed
9 medications; and
- 10 (B) the person’s health and safety, including any pregnancy;
- 11 (5) the current relevant facts and circumstances, including any history of
12 psychiatric treatment and medication, upon which the physician’s opinion is
13 based;
- 14 (6) what alternate treatments have been proposed by the doctor, the
15 patient, or others, and the reasons for ruling out those alternatives; and
- 16 (7) whether the person has executed a durable power of attorney for
17 health care in accordance with the provisions of chapter 111, subchapter 2 of
18 this title, and the identity of the health care agent designated by the durable
19 power of attorney.
- 20 (d) A copy of the durable power of attorney, if available, shall be attached
21 to the petition.

1 § 7666. HEARING ON PETITION FOR INVOLUNTARY MEDICATION;

2 BURDEN OF PROOF

3 (a) A hearing on a petition for involuntary medication shall be held within
4 seven days of filing and shall be conducted in accordance with sections 7652,
5 7653, 7655(b)–(e), and 7656 of this title.

6 (b) In a hearing conducted pursuant to this section or section 7667 or 7668
7 of this title, the Commissioner has the burden of proof by clear and convincing
8 evidence.

9 (c) In determining whether the person is competent to make a decision
10 regarding the proposed treatment, the court shall consider whether the person
11 is able to make a decision and appreciate the consequences of that decision.

12 § 7667. DURABLE POWER OF ATTORNEY

13 (a) If a person who is the subject of a petition filed under section 7665 of
14 this title has executed a durable power of attorney in accordance with the
15 provisions of chapter 111, subchapter 2 of this title for health care, the court
16 shall suspend the hearing and enter an order pursuant to subsection (b) of this
17 section, if the court determines that:

18 (1) the person is refusing to accept psychiatric medication;

19 (2) the person is not competent to make a decision regarding the
20 proposed treatment; and

1 (3) the decision regarding the proposed treatment is within the scope of
2 the valid, duly executed durable power of attorney for health care.

3 (b) An order entered under subsection (a) of this section shall authorize the
4 Commissioner to administer treatment to the person, including involuntary
5 medication in accordance with the direction set forth in the durable power of
6 attorney or provided by the health care agent acting within the scope of
7 authority granted by the durable power of attorney. If hospitalization is
8 necessary to effectuate the proposed treatment, the court may order the person
9 to be hospitalized.

10 (c) In the case of a person subject to an order entered pursuant to
11 subsection (a) of this section, and upon the certification by the person's
12 treating physician to the court that the person has received treatment or no
13 treatment consistent with the durable power of attorney for health care for 45
14 days after the order under subsection (a) of this section has been entered, then
15 the court shall reconvene the hearing on the petition.

16 (1) If the court concludes that the person has experienced, and is likely
17 to continue to experience, a significant clinical improvement in his or her
18 mental state as a result of the treatment or nontreatment directed by the durable
19 power of attorney for health care, or that the patient has regained competence,
20 then the court shall enter an order denying and dismissing the petition.

1 (2) If the court concludes that the person has not experienced a
2 significant clinical improvement in his or her mental state, and remains
3 incompetent, then the court shall consider the remaining evidence under the
4 factors described in subdivisions 7668(c)(1)–(5) of this title and render a
5 decision on whether the person should receive medication.

6 § 7668. COURT FINDINGS; ORDERS

7 (a) The court shall issue an order regarding all possible findings pursuant to
8 this section, and for persons subject to a petition pursuant to subdivision
9 7665(a)(3) of this title, the court shall first find that the person is a person in
10 need of treatment as defined by section 7002 of this title.

11 (b) If a person who is the subject of a petition filed under section 7666 of
12 this title has not executed a durable power of attorney, the court shall follow
13 the person’s competently expressed written or oral preferences regarding
14 medication, if any, unless the Commissioner demonstrates that the person’s
15 medication preferences have not led to a significant clinical improvement in
16 the person’s mental state in the past within an appropriate period of time.

17 (c) If the court finds that there are no medication preferences or that the
18 person’s medication preferences have not led to a significant clinical
19 improvement in the person’s mental state in the past within an appropriate
20 period of time, the court shall consider at a minimum, in addition to the
21 person’s expressed preferences, the following factors:

1 (1) the person's religious convictions and whether they contribute to the
2 person's refusal to accept medication;

3 (2) the impact of receiving medication or not receiving medication on
4 the person's relationship with his or her family or household members whose
5 opinion the court finds relevant and credible based on the nature of the
6 relationship;

7 (3) the likelihood and severity of possible adverse side-effects from the
8 proposed medication;

9 (4) the risks and benefits of the proposed medication and its effect on:

10 (A) the person's prognosis; and

11 (B) the person's health and safety, including any pregnancy; and

12 (5) the various treatment alternatives available, which may or may not
13 include medication.

14 (d) If the court finds that the person is competent to make a decision
15 regarding the proposed treatment or that involuntary medication is not
16 supported by the factors in subsection (c) of this section, the court shall enter a
17 finding to that effect and deny the petition.

18 (e) If the court finds that the person is incompetent to make a decision
19 regarding the proposed treatment and that involuntary medication is supported
20 by the factors in subsection (c) of this section, the court shall make specific

1 findings stating the reasons for the involuntary medication by referencing those
2 supporting factors.

3 (f) If the court grants the petition, in whole or in part, the court shall enter
4 an order authorizing the Commissioner to administer involuntary medication to
5 the person. The order shall specify the types of medication, the dosage range,
6 length of administration, and method of administration for each. The order for
7 involuntary medication shall not include electric convulsive therapy, surgery,
8 or experimental medications. The order shall require the person's treatment
9 provider to conduct monthly reviews of the medication to assess the continued
10 need for involuntary medication, the effectiveness of the medication, and the
11 existence of any side-effects, and shall document this review in detail in the
12 patient's chart.

13 (g) For a person receiving treatment pursuant to an order of hospitalization,
14 the Commissioner may administer involuntary medication as authorized by this
15 section to the person for up to 90 days, unless the court finds that an order is
16 necessary for a longer period of time. Such an order shall not be longer than
17 the duration of the current order of hospitalization.

18 (h) For a person who had received treatment under an order of
19 hospitalization and is currently receiving treatment pursuant to an order of
20 nonhospitalization, if the court finds that without an order for involuntary
21 medication there is a substantial probability that the person would continue to

1 refuse medication and as a result would pose a danger of harm to self or others,
2 the court may order hospitalization of the person for up to 72 hours to
3 administer involuntary medication as ordered under this section.

4 (i) The court may authorize future 72-hour hospitalizations of a person
5 subject to an order under subsection (h) of this section to administer
6 involuntary medication for 90 days following the initial hospitalization, unless
7 the court finds that an involuntary medication order is necessary for a longer
8 period of time. Such an order shall not be longer than the duration of the
9 current order of nonhospitalization.

10 (j) A future administration of involuntary medication authorized by the
11 court under subsection (i) of this section shall occur as follows:

12 (1) The treating physician shall execute and file with the Commissioner
13 a certification executed under penalty of perjury that states all the following:

14 (A) the person has refused medication;

15 (B) the person is not competent to make a decision regarding
16 medication and to appreciate the consequences;

17 (C) the proposed medications, the dosage range, length of
18 administration, and method of administration; and

19 (D) the substantial probability that in the near future the person will
20 pose a danger of harm to self or others if not hospitalized and involuntarily
21 medicated.

1 (2) Depending on the type of medication ordered, the Commissioner
2 shall provide two-to-14-days' notice, as set forth in the initial court order, to
3 the court, the person, and the person's attorney. The notice shall be given
4 within 24 hours of receipt by the Commissioner of the physician's certification
5 and shall state that the person may request an immediate hearing to contest the
6 order. The person may be hospitalized in a designated hospital on the date
7 specified in the notice for up to 72 hours in order to administer involuntary
8 medication.

9 (k) An order for involuntary medication issued under this section shall be
10 effective concurrently with the current order of commitment issued pursuant to
11 section 7663 of this title.

12 (l) The treating physician shall provide written notice to the court to
13 terminate the order when involuntary medication is no longer necessary.

14 (m) At any time, the person may petition the court for review of the order.

15 § 7669. PROTOCOL

16 The Department of Mental Health shall develop and adopt by rule a strict
17 protocol to insure the health, safety, dignity, and respect of patients subject to
18 administration of involuntary psychiatric medications in any designated
19 hospital. This protocol shall be followed by all designated hospitals
20 administering involuntary psychiatric medications.

1 § 7670. NONEMERGENCY INVOLUNTARY MEDICATION

2 (a) This chapter protects the right of a legally competent person to
3 determine whether to accept medical treatment through a judicial proceeding
4 prior to the use of nonemergency involuntary medication and by limiting the
5 duration of an order for involuntary treatment to no more than one year. The
6 least restrictive conditions consistent with the person's right to adequate
7 treatment shall be provided in all cases.

8 (b) It is the policy of the General Assembly to work toward a mental health
9 system that does not require coercion or the use of involuntary medication.

10 (c) This chapter will render the J. L. v. Miller consent judgment no longer
11 applicable.

12 § 7671. ARREST OF ELOPED PERSONS

13 Any sheriff, deputy sheriff, constable, or officer of state or local police, and
14 any officer or employee of any designated hospital, designated program, or
15 training school may arrest any person who has eloped from a designated
16 hospital or designated program or training school and return such person.

17 Sec. 7. 18 V.S.A. chapter 184 is added to read:

18 CHAPTER 184. RIGHTS OF PATIENTS IN THE CUSTODY OF THE
19 COMMISSIONER

1 § 7751. LEGISLATIVE INTENT

2 It is the intention of the General Assembly to recognize the right of a legally
3 competent person to determine whether to accept medical treatment, including
4 involuntary medication, absent an emergency or a determination that the
5 person is incompetent and lacks the ability to make a decision and appreciate
6 the consequences.

7 § 7752. INVOLUNTARY TREATMENT

8 A person may not be made subject to involuntary treatment unless he or she
9 is found to be a person in need of treatment or a patient in need of further
10 treatment.

11 § 7753. HABEAS CORPUS

12 Any individual hospitalized under this part of this title or his or her attorney
13 or an interested party may apply for a writ of habeas corpus from any court
14 generally empowered to issue the writ in the jurisdiction in which the
15 individual is detained.

16 § 7754. RIGHT TO LEGAL COUNSEL

17 In any proceeding before, or notice to, a court of this State involving a
18 patient or student, or a proposed patient or student, that person shall be
19 afforded counsel, and if the patient or student or proposed patient or student is
20 unable to pay for counsel, compensation shall be paid by the State to counsel

1 assigned by the court; however, this section shall not apply to a proceeding
2 under section 7553 of this title.

3 § 7755. WRONGFUL HOSPITALIZATION OR DENIAL OF RIGHTS;

4 FRAUD; ELOPEMENT

5 Any person who willfully causes, or conspires with or assists another to
6 cause:

7 (1) the hospitalization of an individual, knowing that the individual is
8 not mentally ill or in need of hospitalization or treatment as a mentally ill or
9 mentally retarded individual; or

10 (2) the denial to any individual of any rights granted to him or her under
11 this part of this title; or

12 (3) the voluntary admission to a hospital of an individual, knowing that
13 he or she is not mentally ill or eligible for treatment, thereby attempting to
14 defraud the state; or

15 (4) the elopement of any patient or student from a hospital or training
16 school or who knowingly harbors any sick person, or who aids in abducting a
17 patient or student who has been conditionally discharged from the person or
18 persons in whose care and service that patient or student has been legally
19 placed; shall be fined not more than \$500.00 or imprisoned not more than one
20 year, or both.

1 § 7756. APPEALS

2 A patient may appeal any decision of the Board. The appeal shall be to the
3 family division of the superior court of the county wherein the hospital is
4 located. The appeal shall be taken in such manner as the supreme court may
5 by rule provide, except that there shall not be any stay of execution of the
6 decision appealed from.

7 § 7757. CHANGE FROM INVOLUNTARY TO VOLUNTARY

8 At any time, a patient may, with the permission of the head of the hospital,
9 have his or her status changed from involuntary to voluntary upon making
10 application as provided in section 7462 of this title.

11 § 7758. TRANSPORTATION

12 (a) The Commissioner shall ensure that all reasonable and appropriate
13 measures consistent with public safety are made to transport or escort a person
14 subject to this part of this title to and from any inpatient setting, including
15 escorts within a designated hospital or the Vermont State Hospital or its
16 successor in interest or otherwise being transported under the jurisdiction of
17 the Commissioner in any manner which:

18 (1) prevents physical and psychological trauma;

19 (2) respects the privacy of the individual; and

20 (3) represents the least restrictive means necessary for the safety of the
21 patient.

1 (b) The Commissioner shall have the authority to designate the
2 professionals or law enforcement officers who may authorize the method of
3 transport of patients under the Commissioner's care and custody.

4 (c) When a professional or law enforcement officer designated pursuant to
5 subsection (b) of this section decides an individual is in need of secure
6 transport with mechanical restraints, the reasons for such determination shall
7 be documented in writing.

8 (d) It is the policy of the State of Vermont that mechanical restraints are not
9 routinely used on persons subject to this chapter unless circumstances dictate
10 that such methods are necessary.

11 § 7759. TREATMENT; RIGHT OF ACCESS

12 (a) Upon admission to the hospital pursuant to section 7554, 7657, or 7665
13 of this title, the person shall be treated with dignity and respect and shall be
14 given such medical and psychiatric treatment as is indicated.

15 (b) The person shall be given the opportunity, subject to reasonable
16 limitations, to communicate with others, including the reasonable use of a
17 telephone.

18 (c) The person shall be requested to furnish the names of persons he or she
19 may want notified of his or her hospitalization and kept informed of his or her
20 status. The head of the hospital shall see that such persons are notified of the

1 status of the patient, how he or she may be contacted and visited, and how they
2 may obtain information concerning him or her.

3 § 7760. COMMUNICATION AND VISITATION

4 (a) Subject to the general rules and regulations of the hospital and except to
5 the extent that the head of the hospital determines that it is necessary for the
6 medical welfare or needs of the patient or the hospital to impose restrictions,
7 every patient is entitled:

8 (1) to communicate by sealed mail or otherwise with persons, including
9 official agencies, inside or outside the hospital;

10 (2) to receive visitors and to make and receive telephone calls; and

11 (3) to exercise all civil rights, including the right to dispose of property,
12 execute instruments, make purchases, enter contractual relationships, and vote
13 on his or her own initiative, unless he or she has been adjudicated incompetent
14 and has not been restored to legal capacity.

15 (b) Notwithstanding any limitations or restrictions authorized by this
16 section on the right of communication, every patient is entitled to communicate
17 by sealed mail with the Board, the Commissioner, his or her attorney, his or
18 her clergyperson, and the district judge, if any, who ordered his or her
19 hospitalization.

1 § 7761. VISITS BY CLERGY OR ATTORNEY

2 A patient's clergy person or an attorney at law retained by or on behalf of
3 any patient or appointed for him or her by any court shall be admitted to visit
4 at all reasonable times.

5 § 7762. LEGAL COMPETENCE

6 A determination that a person requires treatment and an order of the court
7 authorizing hospitalization or alternative treatment shall not lead to a
8 presumption of legal incompetence for matters other than treatment.

9 § 7763. OUT-OF-STATE PATIENTS

10 Nothing in this part of this title shall be deemed to alter or impair the
11 application or availability to any patient, while hospitalized in a state outside
12 Vermont pursuant to contractual arrangements under section 7162 of this title,
13 of any rights, remedies, or protective safeguards provided by the law of that
14 state or by the Interstate Compact on Mental Health where applicable.

15 § 7764. MENTAL HEALTH PATIENT REPRESENTATIVE

16 For the purpose of coordinating the movement of individuals across the
17 continuum of care to the most appropriate services, the clinical resource
18 management system as described in section 7452 of this title shall ensure that
19 individuals under the custody of the Commissioner being served in designated
20 hospitals, intensive residential recovery facilities, and the secure residential
21 recovery facility shall have access to a mental health patient representative.

1 The patient representative shall advocate for patients and shall also foster
2 communication between patients and health care providers. The Department
3 of Mental Health shall contract with an independent, peer-run organization to
4 staff the full-time equivalent of a patient representative.

5 § 7765. MENTAL HEALTH CARE OMBUDSMAN

6 (a) The Department of Mental Health shall establish the Office of the
7 Mental Health Care Ombudsman within the Agency designated by the
8 Governor as the Protection and Advocacy System for the state pursuant to
9 42 U.S.C. §§ 10801-10827. The Agency may execute the duties of the Office
10 of the Mental Health Care Ombudsman, including authority to assist
11 individuals with mental health conditions and to advocate for policy issues on
12 their behalf; provided, however, that nothing in this section shall be construed
13 to impose any additional duties on the Agency in excess of the requirements
14 under federal law.

15 (b) The Agency may provide a report annually to the General Assembly
16 regarding the implementation of this section.

17 (c) In the event the Protection and Advocacy System ceases to provide
18 federal funding to the Agency for the purposes described in this section, the
19 General Assembly may allocate sufficient funds to maintain the Office of the
20 Mental Health Care Ombudsman.

1 Sec. 8. 18 V.S.A. chapter 175 is amended to read:

2 CHAPTER ~~175~~ 186. THE BOARD OF MENTAL HEALTH

3 § ~~7304~~ 7851. CREATION

4 * * *

5 § ~~7302~~ 7852. SUBCOMMITTEE ON INSTITUTIONS

6 The ~~board~~ Board may delegate to a subcommittee on institutions, composed
7 of two doctors and a lawyer, its functions under sections ~~7305, 7306 and 7308-~~
8 ~~7313~~ 7854 and 7855-7859 of this title; and the action of a majority of the
9 subcommittee shall be that of the ~~board~~ Board.

10 § ~~7304~~ 7853. PERSONS NOT HOSPITALIZED

11 * * *

12 § ~~7305~~ 7854. POWERS OF BOARD

13 The ~~board~~ Board may administer oaths, summon witnesses before it in a
14 case under investigation, and discharge by its order, in writing, any person
15 confined as a patient in a hospital whom it finds on investigation to be
16 wrongfully hospitalized or in a condition to warrant discharge. The ~~board~~
17 Board shall discharge patients, not criminals, who have eloped from a hospital
18 and have not been apprehended at the expiration of six months from the time
19 of their elopement. The ~~board~~ Board shall not order the discharge of a patient
20 without giving the superintendent of the hospital an opportunity to be heard.

1 § ~~7309~~ 7855. REFERRALS FROM GOVERNOR

2 * * *

3 § ~~7340~~ 7856. PETITION FOR INQUIRY

4 * * *

5 § ~~7344~~ 7857. INVESTIGATION

6 * * *

7 § ~~7342~~ 7858. PENALTY; FAILURE TO OBEY SUMMONS

8 * * *

9 § ~~7313~~ 7859. BOARD SHALL VISIT INSTITUTION

10 * * *

11 § ~~7314~~ 7860. RECIPROCAL AGREEMENTS

12 * * *

13 § ~~7315~~ 7861. DEFINITION

14 As used in this chapter, the term “hospital” shall include a secure residential
15 recovery facility as defined in ~~subsection 7620(e)~~ section 7002 of this title.

16 Sec. 9. 18 V.S.A. chapter 197 is amended to read:

17 CHAPTER ~~197~~ 188. MENTALLY ILL USERS OF ALCOHOL OR DRUGS

18 § ~~8402~~ 7951. HOSPITALIZATION

19 * * *

20 § ~~8403~~ 7952. LENGTH OF TREATMENT

21 * * *

1 § ~~8404~~ 7953. CONDITIONAL DISCHARGE

2 * * *

3 § ~~8405~~ 7954. OUTSIDE VISITS

4 In the discretion of the head of a hospital, a patient admitted under this
5 chapter may be permitted to visit a specifically designated place for a period
6 not to exceed five days and return to the same hospital. The visit may be
7 allowed to see a dying relative, to attend the funeral of a relative, to obtain
8 special medical services, to contact prospective employers, or for any
9 compelling reason consistent with the welfare or rehabilitation of the patient.

10 Sec. 10. 12 V.S.A. § 1612(a) is amended to read:

11 (a) Confidential information privileged. Unless the patient waives the
12 privilege or unless the privilege is waived by an express provision of law, a
13 person authorized to practice medicine, chiropractic, or dentistry, a registered
14 professional or licensed practical nurse, or a mental health professional as
15 defined in 18 V.S.A. § ~~7101(13)~~ 7002 shall not be allowed to disclose any
16 information acquired in attending a patient in a professional capacity, including
17 joint or group counseling sessions, and which was necessary to enable the
18 provider to act in that capacity.

19 Sec. 11. 13 V.S.A. § 4815(g) is amended to read:

20 (g)(1) Inpatient examination at the Vermont State Hospital, or its successor
21 in interest, or a designated hospital. The court shall not order an inpatient

1 examination unless the designated mental health professional determines that
2 the defendant is a person in need of treatment as defined in
3 18 V.S.A. § ~~7101(17)~~ 7002.

4 * * *

5 Sec. 12. 13 V.S.A. § 4822 is amended to read:

6 § 4822. FINDINGS AND ORDER; MENTALLY ILL PERSONS

7 (a) If the court finds that such person is a person in need of treatment or a
8 patient in need of further treatment as defined in 18 V.S.A. § ~~7101~~ 7002, the
9 court shall issue an order of commitment directed to the ~~commissioner of~~
10 ~~developmental and mental health services~~ Commissioner of Mental Health,
11 which shall admit the person to the care and custody of the ~~department of~~
12 ~~developmental and mental health services~~ Department of Mental Health for an
13 indeterminate period. In any case involving personal injury or threat of
14 personal injury, the committing court may issue an order requiring a court
15 hearing before a person committed under this section may be discharged from
16 custody.

17 (b) Such order of commitment shall have the same force and effect as an
18 order issued under 18 V.S.A. §§ ~~7611-7622~~ 7651-7653, 7655-7662, and 7752,
19 and persons committed under such an order shall have the same status, and the
20 same rights, including the right to receive care and treatment, to be examined

1 and discharged, and to apply for and obtain judicial review of their cases, as
2 persons ordered committed under 18 V.S.A. §§ ~~7611-7622~~ 7651-7653,
3 7655-7662, and 7752.

4 * * *

5 Sec. 13. 13 V.S.A. § 5411a(1) is amended to read:

6 (1) A sex offender's street address shall not be posted electronically if the
7 offender has a developmental disability, receives funding from the ~~department~~
8 ~~of disabilities, aging, and independent living~~ Department of Disabilities,
9 Aging, and Independent Living (DAIL) for 24-hour supervision and treatment,
10 and resides in a residence that is equipped with alarms. However, this
11 information shall be otherwise available pursuant to this section. An agency
12 designated pursuant to 18 V.S.A. § ~~8907~~ 7454 to provide mental health and
13 developmental disability services (DA), or a specialized service agency (SSA)
14 operating under an agreement entered into pursuant to 18 V.S.A. § ~~8912~~ 7458
15 which is providing supervision for the offender shall immediately notify the
16 ~~administrator of the sex offender registry~~ Administrator of the Sex Offender
17 Registry and local law enforcement if the individual's level of supervision is
18 decreased from 24 hours or if the offender leaves his or her residence without
19 authorization, and thereafter this subsection shall cease to apply to that
20 offender. If after notice and hearing, the ~~commissioner~~ Commissioner of
21 DAIL finds that the DA or SSA has failed to notify the ~~administrator of the sex~~

1 ~~offender registry~~ Administrator of the Sex Offender Registry and local law
2 enforcement of a decrease from 24-hour supervision or absence without
3 authorization by the offender within 24 hours of the change in status, the
4 ~~commissioner~~ Commissioner may impose an administrative penalty of not
5 more than \$1,000.00 for each day of the violation. A DA or SSA shall have
6 the right to a de novo appeal of a decision under this subsection pursuant to
7 Rule 75 of the Vermont Rules of Civil Procedure.

8 Sec. 14. 18 V.S.A. § 704(a) is amended to read:

9 (a) Consistent with federal law to ensure federal financial participation, a
10 health care professional providing a patient's medical home shall:

11 * * *

12 (5) ensure access to a patient's medical records by the community health
13 team members in a manner compliant with the Health Insurance Portability and
14 Accountability Act, 12 V.S.A. § 1612, sections 1852, ~~7103~~ 7012, 9332, and
15 9351 of this title, and 21 V.S.A. § 516; and

16 * * *

17 Sec. 15. 18 V.S.A. § 4226(a) is amended to read:

18 (a) If a minor 12 years of age or older is suspected either (1) to be
19 dependent upon regulated drugs as defined in section 4201 of this title, or (2)
20 to have venereal disease or (3) to be an alcoholic ~~as defined in section 8401 of~~
21 ~~this title~~, and the finding of such dependency or disease or alcoholism is

1 verified by a licensed physician, the minor may give (1) his or her consent to
2 medical treatment and hospitalization and, (2) in the case of a drug dependent
3 or alcoholic person, ~~non-medical~~ nonmedical inpatient or outpatient treatment
4 at a program approved by the ~~agency of human services~~ Agency of Human
5 Services to provide treatment for drug dependency or alcoholism if deemed
6 necessary by the examining physician for diagnosis or treatment of such
7 dependency or disease or alcoholism. Consent under this section shall not be
8 subject to disaffirmance due to minority of the person consenting. The consent
9 of the parent or legal guardian of a minor consenting under this section shall
10 not be necessary to authorize care as described ~~above~~ in this subsection.

11 Sec. 16. 18 V.S.A. § 8705(a) is amended to read:

12 (a) It is the policy of the ~~state~~ State of Vermont to allow voluntary and
13 involuntary sterilizations of mentally retarded adults under circumstances
14 which will ensure that the best interests and rights of such persons are fully
15 protected. In accordance with this policy, no mentally retarded person, as
16 defined by section ~~7101(12)~~ 7002 of this title, may be sterilized without his or
17 her consent unless there is a prior hearing in the superior court as provided in
18 this chapter. No mentally retarded person under the age of 18 may be
19 sterilized.

1 Sec. 17. 18 V.S.A. § 8846 is amended to read:

2 § 8846. RIGHT TO COUNSEL

3 Persons subject to commitment or judicial review under this subchapter
4 shall have a right to counsel as provided in section ~~7444~~ 7554 of this title.

5 Sec. 18. 32 V.S.A. § 6061(5) is amended to read:

6 (5) "Modified adjusted gross income" means "federal adjusted gross
7 income":

8 * * *

9 (C) without the inclusion of: any gifts from nongovernmental
10 sources other than those described in subdivision (B) of this subdivision (5);
11 surplus food or other relief in kind supplied by a governmental agency; or the
12 first \$6,500.00 of income earned by a full-time student who qualifies as a
13 dependent of the claimant under the federal Internal Revenue Code; the first
14 \$6,500.00 of income received by a person who qualifies as a dependent of the
15 claimant under the Internal Revenue Code and who is the claimant's parent or
16 disabled adult child; or payments made by the state pursuant to 33 V.S.A.
17 chapters 49 and 55 for foster care, or payments made by the ~~state~~ State or an
18 agency designated in 18 V.S.A. § ~~8907~~ 7454 for adult foster care or to a family
19 for the support of an eligible person with a developmental disability. If the
20 ~~commissioner~~ Commissioner determines, upon application by the claimant,
21 that a person resides with a claimant who is disabled or was at least 62 years of

1 age as of the end of the year preceding the claim, for the primary purpose of
2 providing attendant care services (as defined in 33 V.S.A. § 6321) or
3 homemaker or companionship services, with or without compensation, which
4 allow the claimant to remain in his or her home or avoid institutionalization,
5 the ~~commissioner~~ Commissioner shall exclude that person's modified adjusted
6 gross income from the claimant's household income. The ~~commissioner~~
7 Commissioner may require that a certificate in a form satisfactory to the
8 ~~commissioner~~ Commissioner be submitted which supports the claim;

9 * * *

10 Sec. 19. REPEAL

11 18 V.S.A. chapters 171 (general provisions), 173 (the Department of Mental
12 Health), 174 (mental health system of care), 177 (the Commissioner of Mental
13 Health), 179 (admission procedures), 181 (judicial proceedings), 183 (care and
14 treatment), 185 (automatic review), 187 (transfer of patients), 189 (release and
15 discharge), and 207 (community mental health and developmental services) are
16 hereby repealed.

17 Sec. 20. REDESIGNATION

18 18 V.S.A. chapters 219 (health information technology and telemedicine)
19 and 220 (Green Mountain Care Board) shall be redesignated to appear within
20 18 V.S.A. part 9.

1 Sec. 21. EFFECTIVE DATE

2 This act shall take effect on July 1, 2013.