

Final Proposed Filing - Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the "Rule on Rulemaking" adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms shall be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of "Proposed Rule Postings" online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

PLEASE REMOVE ANY COVERSHEET OR FORM NOT REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

The Rules for Administration of Nonemergency Involuntary Psychiatric Medications

/s/ Kristin L. McClure _____, on 10/15/24
(signature) (date)

Printed Name and Title:

RECEIVED BY: _____

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Minutes
- Copy of Comments
- Responsiveness Summary

1. TITLE OF RULE FILING:

**The Rules for Administration of Nonemergency
Involuntary Psychiatric Medications**

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

24P 023

3. ADOPTING AGENCY:

Department of Mental Health

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Karen Barber

Agency: Agency of Human Services

Mailing Address: 280 State Drive, Ctr. Bldg., Waterbury,
VT 05671

Telephone: 802-461-809# Fax:

E-Mail: karen.barber@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

[https://mentalhealth.vermont.gov/policy-and-
legislative-resources/rules](https://mentalhealth.vermont.gov/policy-and-legislative-resources/rules)

5. SECONDARY CONTACT PERSON:

*(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY
ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE
PRIMARY CONTACT PERSON).*

Name: Nicole DiStasio

Agency: Agency of Human Services

Mailing Address: 280 State Drive, Ctr. Bldg., Waterbury,
VT 05671

Telephone: 802-904-322# Fax:

E-Mail: nicole.distasio@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

*(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL;
LIMITING ITS PUBLIC RELEASE; OR OTHERWISE, EXEMPTING IT FROM INSPECTION AND
COPYING?)* No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

18 V.S.A. § 7628 and Act 27 (2023) and 3 V.S.A. § 801(b) (11)

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

18 V.S.A. § 7628 states, "The Department of Mental Health shall develop and adopt by rule a strict protocol to ensure the health, safety, dignity and respect of patients subject to administration of involuntary psychiatric medications in any designated hospital. This protocol shall be followed by all designated hospitals administering involuntary psychiatric medications." Act 27 (2023) states, "the Commissioner of Mental Health shall file an initial proposed rule amendment with the Secretary of State pursuant to 3 V.S.A. § 836(a)(2) to amend the Department of Mental Health, Rules for the Administration of Nonemergency Involuntary Psychiatric Medications (CVR 13-150-11) for the purpose of allowing the administration of involuntary medication at a forensic facility."

9. THE FILING HAS NOT CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS NOT INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE NOT RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS NOT INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS NOT INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (150 WORDS OR LESS):

This rule outlines the procedures for the administration of nonemergency involuntary psychiatric medications by the Department of Mental Health Services (DMH). This rulemaking adds a "forensic

facility," as defined by Act 27 (2023) to the list of facilities where involuntary psychiatric medications can be administered. Section 7: USE OF RESTRAINTS WHEN ADMINISTERING NONEMERGENCY INVOLUNTARY MEDICATION" has been removed from this rule because these requirements are addressed in a separate DMH rule. Terms and formatting have also been updated.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

Act 27 (2023) requires the Department to make this amendment. More generally, this rule for the administration of nonemergency involuntary psychiatric medications is necessary to provide a clear framework for addressing situations where individuals with mental health issues may require treatment without consent.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

This amendment is required by Act 27 (2023). The decisions made by the Department regarding these regulations are factually based, rationally connected to those factual bases, and would make sense to a reasonable person.

17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

Patients who have been determined to need the administration of involuntary psychiatric medications. Treatment Teams.

18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

This rulemaking is not anticipated to have a measurable economic impact, as it simply adds to the locations where such medications can be administered.

19. A HEARING WAS HELD.

20. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING, PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 7/26/2024

Time: 01:00 PM

Street Address: 280 State Drive, Ctr. Bldg., Waterbury, VT

Zip Code: 05671

URL for Virtual: https://teams.microsoft.com/l/meetup-join/19%3ameeting_YTljOTEyNzAtZjJiYy00ZTIyLWE0ZDgtYTVlOWI3YzEOMThm40thread.v2/0?context=%7b%22Tid%22%3a%2220b4933bbaad433c-9c02-70edcc7559c6%22%2c%220id%22%3a%22a958e0f7-a03f4904-b5a6-5f387e9f350b%22%7d

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21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

8/7/2024

KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Involuntary
Psychiatric Medication
Forensic Facility
Mental Health

280 State Drive - Center Building
Waterbury, VT 05671-1000



OFFICE OF THE SECRETARY
TEL: (802) 241-0440
FAX: (802) 241-0450

JENNEY SAMUELSON
SECRETARY

TODD W. DALOZ
DEPUTY SECRETARY

STATE OF VERMONT
AGENCY OF HUMAN SERVICES

MEMORANDUM

TO: Sarah Copeland Hanzas, Secretary of State

FROM: Jenney Samuelson, Secretary, Agency of Human Services

DATE: August 6, 2024

SUBJECT: Signatory Authority for Purposes of Authorizing Administrative Rules

I hereby designate Kristin McClure, Interim Deputy Secretary, Agency of Human Services as signatory to fulfill the duties of the Secretary of the Agency of Human Services as the adopting authority for administrative rules as required by Vermont's Administrative Procedures Act, 3. V.S.A § 801 et seq.

CC: KristinMcClure@vermont.gov

Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. **TITLE OF RULE FILING:**

**The Rules for Administration of Nonemergency
Involuntary Psychiatric Medications**

2. **ADOPTING AGENCY:**

Department of Mental Health

3. **TYPE OF FILING (PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU
BASED ON THE DEFINITIONS PROVIDED BELOW):**

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment if the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

4. **LAST ADOPTED (PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF
THE LAST ADOPTION FOR THE EXISTING RULE):**

99-41, Rules for the Administration of Nonemergency
Involuntary Psychiatric Medications, August 18 1999



INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: January 8, 2024, virtually via Microsoft Teams

Members Present: Chair Sean Brown, Jared Adler, Jennifer Mojo, Diane Sherman, Michael Obuchowski, and Nicole Dubuque

Members Absent: John Kessler

Minutes By: Melissa Mazza-Paquette

- 2:00 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the November 13, 2023 meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
- No public comments made.
- Presentation of Proposed Rules on pages 2-12 to follow.
 1. Administration of Nonemergency Involuntary Psychiatric Medications, Department of Mental Health, page 2
 2. Vital Records Rule, Department of Health, page 3
 3. VPharm Coverage, Department of Vermont Health Access, page 4
 4. Rules Governing the Importation of Domestic Animals, Including Livestock and Poultry, Vermont Agency of Agriculture, Food & Markets, page 5
 5. Antidegradation Implementation Rule, Agency of Natural Resources, page 6
 6. Reach Up Eligibility Rules, Department for Children and Families, page 7
 7. Reach Up Services Rules, Department for Children and Families, page 8
 8. Reach First Rules, Department for Children and Families, page 9
 9. Postsecondary Education Program Rules, Department for Children and Families, page 10
 10. Private Nonmedical Institution Rules Simplification, Department of Vermont Health Access, page 11
 11. Nursing Home Reimbursement Rule Simplification, Department of Vermont Health Access, page 12
- Next scheduled meeting is Monday, February 23, 2024 at 1:00 p.m.
- 3:38 p.m. meeting adjourned.

Proposed Rule: Administration of Nonemergency Involuntary Psychiatric Medications, Department of Mental Health

Presented By: Karen Barber

Motion made to accept the rule as presented without any recommendations by Sean Brown, seconded by Nicole Dubuque, and passed unanimously except for Jared Adler who abstained.



Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn’t appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

**The Rules for Administration of Nonemergency
Involuntary Psychiatric Medications**

2. ADOPTING AGENCY:

Department of Mental Health

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

Patients: No economic impact is anticipated

Treatment Teams and facilities: No economic impact is anticipated

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

No impact is anticipated for schools

5. ALTERNATIVES: *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

Because there are no impacts, alternatives have not been considered

6. IMPACT ON SMALL BUSINESSES:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

No impact is anticipated for small businesses

7. SMALL BUSINESS COMPLIANCE: *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

Because there are no impacts, alternatives have not been considered

8. COMPARISON:

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

The Department is required to amend this rule. In the absence of this amendment, these procedures would be utilized at another designated facility' in lieu of a forensic facility.

9. SUFFICIENCY: *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

The Department has provided the relevant information it has based on an assessment of the potential impacts.

Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. TITLE OF RULE FILING:

**The Rules for Administration of Nonemergency
Involuntary Psychiatric Medications**

2. ADOPTING AGENCY:

Department of Mental Health

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

No impact is anticipated

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

No impact is anticipated

5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

No impact is anticipated

6. **RECREATION:** *EXPLAIN HOW THE RULE IMPACTS RECREATION IN THE STATE:*
No impact is anticipated
7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*
No impact is anticipated
8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*
No impact is anticipated
9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*
The rule does not impact any of the areas listed above, and therefore, this analysis sufficiently captures that there will be no environmental impact.

Public Input Maximization Plan

Instructions:

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

This form must accompany each filing made during the rulemaking process:

1. **TITLE OF RULE FILING:**

**The Rules for Administration of Nonemergency
Involuntary Psychiatric Medications**

2. **ADOPTING AGENCY:**

Department of Mental Health

3. **PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE, LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:**

A public hearing was held.

The rule was posted on the Department of Mental Health website: <https://mentalhealth.vermont.gov/policy-and-legislative-resources/rules>

4. **BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:**

Solicited input from: Vermont Legal Aid, Disability Rights Vermont, Adult State Standing Committee, Mad Freedom, VAHHS, VCP, NAMI, Vermont Psychiatric Survivors.

Received input from: Disability Rights Vermont, Adult State Standing Committee, Mad Freedom, VAHHS

Public Input

RULES
for the
ADMINISTRATION OF NONEMERGENCY INVOLUNTARY PSYCHIATRIC MEDICATIONS

1. POLICY STATEMENT

The Department of ~~Developmental and Mental Health Services~~ Mental Health (DMH) is committed to providing voluntary mental health care in a service system that respects consumers' ~~individuals'~~ health, safety, and dignity. The Department ~~DMH~~ recognizes the right of a legally competent person to make decisions regarding medication. At the same time the Department ~~DMH~~ acknowledges that involuntary care is currently unavoidable in certain circumstances as set forth in the ~~Mental Health Act~~ Title 18 of the Vermont Statutes Annotated. The Department ~~DMH~~ continues to work toward the development of a service system in which coercion and involuntary care will no longer be necessary. Until that ideal is achieved, the Department ~~DMH~~ will strive to provide involuntary care found to be necessary in a manner that affords as much protection as possible for the respect, ~~dignity~~ dignity, and rights of the individual.

2. AUTHORITY

These rules ~~is~~ are adopted pursuant to ~~authorized~~ authorized by 18 V.S.A. § 7628 and Act 27 (2023).

3. AVAILABILITY

~~A copy of these rules shall be made available to any person who requests a copy.~~

4.3. DEFINITIONS

~~4.1.3.1.~~ 4.3.1. *The Commissioner:* The Commissioner of the ~~Department of Developmental and Mental Health Services~~ DMH or a designee as authorized by 18 V.S.A. § 7401(13).

~~4.2.3.2.~~ 4.3.2. *Competence:* A person is competent if a person is able to make a decision regarding medication and to appreciate the consequences.

~~4.3.3.3.~~ 4.3.3. *Court Order:* An order from the criminal court or the family court authorizing the ~~Department of Developmental and Mental Health Services~~ DMH to administer involuntary medication to the person named in the order.

~~4.4.~~ 4.4. *The Department:* The Department of Developmental and Mental Health Services.

~~3.4.~~ 3.4. *Designated Facility:* A hospital, forensic facility (as defined by Act 27 of 2023), ~~or~~ medical psychiatric unit in a correctional facility, or other facility authorized by statute to administer nonemergency involuntary psychiatric medications. A Designated Facility shall demonstrating the ability to meet the requirements of this protocol, including the requisite trained staff, medical personnel and physical space and as designated by the Commissioner to provide care for a patient with mental illness.

~~3.5.~~ 3.5. *DMH:* The Department of Mental Health.

- 3.6. Impartial Evaluator: A contracted individual not employed by DMH or under the supervision of the Commissioner, who has no prior personal knowledge of the circumstances under review.
- 4.5.3.7. Medical Personnel Staff: A physician, physician assistant, advance practice registered nurse, registered nurse, or psychiatric technician/mental health specialist.
- 3.8. Patient Person: An individual who is the subject of a court order authorizing the Department of Developmental and Mental Health Services DMH to administer involuntary medication to that individual.
- 3.9. Qualified Practitioner: An advance practice registered nurse or physician assistant who is licensed by the State of Vermont and who is appropriately credentialed to provide the psychiatric services described in this Rule.
- 4.7.3.10 Treatment Team: The patient's Person's community and/or treating psychiatrist(s), or other Qualified Practitioner, case manager and any other individual the community treatment team deems clinically appropriate. If the person does not have a treatment team in the community, the members of the team will be the Person's inpatient or residential facility treating psychiatrist, or other Qualified Practitioner, case manager and any other individual deemed clinically appropriate.

4.8. ~~Impartial Evaluator: A contracted individual not employed by the Department nor under the supervision of the Commissioner, who has no prior personal knowledge of the circumstances under review.~~

5.4. NOTICE OF INTENT TO ADMINISTER MEDICATION

5.1.4.1. Prior to executing a court order authorizing the administration of involuntary medication,

5.1.1.4.1.1. ~~The Department~~DMH shall:

- a. Allow the ~~patient's~~person's legal counsel twenty-four hours to inform the ~~patient-person~~ of the court order; and
- b. Notify the ~~patient's~~person's treatment team of the court order.

5.1.2.4.1.2. ~~The patient's~~person's treating physician or Qualifying Practitioner shall meet with the ~~patient~~person:

- a. After the ~~patient person~~ has been informed by ~~his or her~~ their legal counsel of the court order; or
- b. After the ~~patient's~~ person's legal counsel has had twenty-four hours to inform the ~~patient person~~ of the court order, regardless of whether the legal counsel has chosen to meet with the ~~patient person~~.

5.1.3.4.1.3. The treatment team must:

- a. Inform the ~~patient~~ person orally and in writing in a language and in a manner understandable to the ~~patient~~ person of:
 - i. the type of medication to be administered;
 - ii. the dose that will be administered;
 - iii. the method of delivery;
 - iv. the route of delivery;
 - v. the frequency of delivery;
 - vi. the intended effects;
 - vii. any risks in keeping with standard medical practice, including likely side effects, unlikely but serious side effects, health problems that might be encountered, common drug interactions including those of street drugs and alcohol, and in the case of all women of child bearing age, the effects of neuroleptics on a fetus or nursing child; and
- b. Offer the ~~patient~~ person an opportunity to take oral medication unless the court order authorizes the administration of a long-acting medication which can only be administered by injection.

6.5. ADMINISTRATION OF NONEMERGENCY MEDICATION

6.1.5.1. The ~~physician or~~ Qualifying Practitioner writing the ~~medication~~ Physician's ~~Order~~ for the medication ~~at the hospital~~ shall be responsible for assessing and documenting the following ~~which shall then be provided to the facility administering the medication~~:

6.1.1.5.1.1. The ~~patient's~~ person's current physical health status;

6.1.2.5.1.2. Whether the ~~patient~~ person is currently taking any other medications;

6.1.3.5.1.3. The ~~patient's~~ person's history of side effects from medication;

6.1.4.5.1.4. Whether the ~~patient~~ person is pregnant if a woman of child bearing age;

6.1.5.5.1.5. The ~~patient's~~ person's medical history, including any history of substance abuse; and

6.1.6.5.1.6. That the ~~physician's~~ medication order is in compliance with the court's medication order with respect to the type of medication, the dosage, the length of administration and the method of administration.

6.2.5.2. The treating ~~physician or~~ Qualified Practitioner shall conduct monthly reviews of the medication to assess the continued need for involuntary medication, the effectiveness of the medication, the existence of any side effects, and shall document this review in detail in the ~~patient's~~ person's chart.

~~6.3.5.3.~~ The treating physician or Qualified Practitioner shall provide written notice to the court to terminate the medication order when involuntary medication is no longer required.

~~6.4.5.4.~~ The treatment team shall:

~~6.4.1.5.4.1.~~ Make best efforts to obtain the patient's person's preference on the manner of medication administration after the court issues an order granting the application and immediately prior to the administration of medication;

~~6.4.2.5.4.2.~~ Provide the facility administering the medication with a Consider the current, written medical history of the patient that includes whether the patient has a history of trauma;

~~6.4.3.5.4.3.~~ Have at least one member present when the medication is administered and at the time of release; and

~~6.4.4.5.4.4.~~ Assure that the patient-person has the opportunity to choose a support person, to be present to offer emotional support when the medication is administered. If the chosen support person is not available within a reasonable period of time or interferes with the administration of medication, or the frequency of administration precludes the presence of the support person each time, medication may be administered without the support person's presence.

~~6.5.5.5.~~ Location

~~6.5.1.~~ Medications must be administered at a Designated Facility, ~~the Vermont State Hospital or at a facility designated by the Commissioner of the Department of Developmental and Mental Health Services as a hospital where involuntary medication may be administered.~~

~~6.6.2.5.6.2.~~ The person who gives the medication to the Medical Personnel or Qualified Practitioner ~~patient~~ shall:

- a. Verify that the ~~patient-person~~ is the subject of a current involuntary medication order;
- b. Verify that the proper medication is provided to the ~~patient-person~~ in the proper dosage; and
- c. Follow clinically appropriate practices and procedures for the administration of oral medication.

~~5.6.3.~~ The person who gives the medication to the patient Medical Personnel or Qualified Practitioner may perform a mouth check to verify that the ~~patient-person~~ has swallowed the medication.

- a. If the person refuses to comply with a mouth check, then the treatment team is not required to offer voluntary oral medication the next time medication is

administered but may do so at their discretion.

~~d.b.~~

~~6.6.3.5.6.4.~~ After administering the medication, a hospital facility staff member shall personally observe the patient-person long enough to ensure there are no adverse side effects and to ensure patient safety.

~~6.6.4.~~ If the patient refuses to comply with a mouth check then, in the discretion of the treatment team, voluntary oral medication may not be offered the next time medication is administered.

6.7.5.7. Injectable Medication

~~6.7.1.5.7.1.~~ The Medical Personnel or Qualified Practitioner ~~person~~ who administers the medication to the patient-person shall be:

- ~~a.~~ A licensed nurse or doctor trained in the administration of administration of medication when treating a resistant person; and
- ~~b.~~ Trained in the administration of medication when treating a resistant patient.

~~6.7.2.5.7.2.~~ The ~~person who administers the medication~~ Medical Personnel or Qualified Practitioner shall:

- a. Verify that the patient-person is the subject of a current involuntary medication order;
- b. Verify that the proper medication is prepared in the proper dosage;
- c. Fully inform the patient-person of all aspects of the procedure;
- d. Give the patient-person a choice of clinically appropriate injection sites and follow that preference if medically safe;
- e. Follow clinically appropriate practices and procedures for the administration of injectable medication;
- f. Be of the gender chosen by the person receiving the medication if at all possible;
- g. Ensure that a physician is immediately accessible; and
- h. Be responsible for assuring that a support ~~person~~ person of the patient's-person's choosing is present when the medication is administered, unless the support person interferes with the administration of the medication or, the frequency of administration precludes the presence of the support person each time.

~~6.7.3.5.7.3.~~ The ~~person~~ Medical Personnel or Qualified Practitioner who administers the medication shall be accompanied by at least one health professional of the gender chosen by the person patient.

~~6.7.4.5.7.4.~~ After administering the medication, a facility staff member shall:

- a. personally observe the patient-person long enough to ensure there are no adverse side effects endangering patient safety;
- b. offer emotional support to the patient-person.

~~6.7.5.5.7.5.~~ All procedures shall be documented in accordance with standard medical practice.

7.6. **FUTURE ADMINISTRATION OF INVOLUNTARY MEDICATION**

~~7.1.6.1.~~ Where the court's medication order authorizes future administration of involuntary medication, the treating physician shall execute and file with the Commissioner a certification executed under penalty of perjury stating the following:

~~7.1.1.6.1.1.~~ The patient-person has refused medication;

~~7.1.2.6.1.2.~~ The patient-person is not competent to make a decision regarding medication and to appreciate the consequences;

~~7.1.3.6.1.3.~~ The proposed medications, the dosage range, length of administration and method of administration; and

~~7.1.4.6.1.4.~~ The substantial probability that in the near future the person will pose a danger of harm to self or others if not hospitalized and involuntarily medicated.

~~7.2.6.2.~~ Within 24 hours of receipt of the physician's certification, the Commissioner shall provide the amount of notice required by the court order to the patient-person, the patient's person's attorney-legal counsel and the court.

~~8.6.3.~~ Any other pertinent factors.

~~8.7.~~ A Certificate of Need for emergency restraints shall be entered into the patient's record that documents the emergency circumstances requiring the use of restraints.

~~8.8.~~ Legal counsel for the patient shall be notified and provided with a copy of the Certificate of Need within twenty four hours following administration of medication.

~~8.9.~~ The least restrictive method of restraint must be used and applied in a manner which provides for padding and protection of all parts of the body where pressure areas might occur by friction and shall:

~~8.9.1.~~ Be adjusted to eliminate the danger of gangrene, sores and paralysis;

~~8.9.2.~~ Allow room for healthy breathing; and

~~8.9.3.~~ Allow the patient as much freedom as possible.

~~8.10.~~ Restraints shall be applied under direct supervision of a nurse who is trained in the use of restraints. The following should not be used under any circumstances: a) face down restraint with back pressure; b) any technique that obstructs the airway or impairs breathing, c) any technique that obstructs vision, d) any technique that restricts the recipient's ability to communicate.

~~8.11.~~ Medical staff must constantly observe a patient in restraints. Vital signs should be checked initially and regularly thereafter (every fifteen minutes at a minimum) if abnormal.

~~8.12.7.2.~~ A patient in restraints shall be encouraged to take liquids, be allowed reasonable opportunity for toileting and shall be provided appropriate food, lighting, ventilation and clothing or covering. An individual being restrained should always be informed about what is happening, verbally and during the restraint period. Information should include what events or behaviors precipitated the use of restraint, and when and under what circumstances the patient can expect to be released.

~~8.13.~~ A patient shall be removed from restraints as soon as it is determined that safety reasons no longer necessitate the use of restraints. Restraint orders should always be time limited, and should be removed as soon as it becomes safe to do so, even if the time limited order has not expired. Every hour, a nurse shall review the need for continued restraint. No

~~9.3.8.3.~~ Prior to discharge, a member of the treatment team shall provide the patient-person with physician's order for the use of restraints shall extend beyond a two-hour period. ~~written instructions regarding:~~

~~8.14.~~ Medical staff shall examine a patient for injuries immediately after being released from restraints. ~~9.3.1.8.3.1.~~ Side effects;

~~8.15.~~ ~~9.3.2.8.3.2.~~ Required after-care: Following the removal of restraints, medical staff must inquire if the patient wishes to have a particular person notified of the use of restraints. If so, medical staff must notify that person within twenty-four hours of the restraint.

~~8.16.~~ Patient and staff debriefing should be required after every incident of seclusion or restraint, both separately and together. Gender concerns should be addressed as part of the debriefing.

~~9.8.~~ **DISCHARGE OF PATIENT-PERSON NOT SUBJECT TO ORDER OF HOSPITALIZATION**

~~9.1.8.1.~~ If a person is brought into the hospital-Designated Facility only pursuant to a medication order, a physician or Qualified Practitioner must determine the amount of time that the patient-person will be required to stay at the hospital-facility.

prior to discharge, but in no case longer than the time period allowed in the court order. This decision shall be based on appropriate clinical practices and procedures regarding the discharge of a patient-person who has received the type of medication administered to the patient-person.

~~9.2.8.2.~~ Prior to discharge, the patient-person shall receive any support and the necessary counseling and assistance to support the necessary to ensure the patient's-person's comfort.

9.3.8.3. Prior to discharge, a member of the treatment team shall provide the patient-person with written instructions regarding:

~~9.3.1.8.3.1.~~ Side effects;

~~9.3.2.8.3.2.~~ Required after-care;

~~9.3.3.8.3.3.~~ A person's or persons' name and phone number to contact if the patient-person has any questions or concerns or starts to experience side effects;

~~9.3.4.8.3.4.~~ Grievance procedures; and

~~9.3.5.8.3.5.~~ Follow-up with the community mental health center.

9.4.8.4. A physician or Qualified Practitioner must approve the patient's-person's release after making a determination that there are minimal clinical risks.

9.5.8.5. A member of the treatment team shall arrange transportation to return the patient-person to their residence. If the patient-person does not have housing available, a member of the treatment team shall arrange temporary housing for the patient-person.

10.9. COMPLIANCE AND ENFORCEMENT

~~10.1.9.1.~~ A member of the treatment team shall report to the Commissioner every time a patient-person is administered involuntary medication in a designated facility within seventy-two hours of entering the hospital/facility.

~~10.2.9.2.~~ The Commissioner shall review on a periodic basis every instance of a patient-person being administered involuntary medication in a designated facility.

~~10.3.9.3.~~ The Commissioner shall conduct periodic reviews of every patient-person who is subject to an involuntary medication order.

~~10.4.9.4.~~ A facility's designation shall depend upon strict compliance with this protocol. The Commissioner may revoke a facility's designated status for noncompliance with this rule.

~~10.5.9.5.~~ Any patient-person who is subject to an involuntary medication order may file a grievance with the appropriate agency alleging a violation of this protocol. The grievance must be filed within ninety (90) days of the action that is being grieved. This time limit may be extended if the patient-person did not know or understand the right to appeal. The agency shall report the filing and substance of a grievance to the Commissioner within seventy-two hours of receiving the grievance.

~~10.6.9.6.~~ Within thirty (30) days of receiving the grievance, the ~~community mental health center or D~~designated ~~F~~facility shall notify the ~~patient person~~ of its decision in writing, in a language and manner understandable to the ~~patient person~~, including the reasons for the decision.

~~10.7.9.7.~~ The decision made by the ~~community mental health center or D~~designated ~~F~~facility concerning the grievance may be appealed to the Commissioner. Any such appeal must be filed within thirty (30) days of the day the ~~patient person~~ received written notice of the decision.

~~10.8.9.8.~~ Upon receipt of the appeal, the Commissioner shall assign an impartial evaluator to conduct a review of the appealed incident. Within thirty (30) days of receipt of the appeal assignment, the evaluator shall recommend to the Commissioner whether to affirm or change the decision of the agency or designated facility. Within ten (10) days of receiving the evaluator's decision, the Commissioner shall notify the ~~patient person~~ of ~~his/her~~ the Commissioner's decision in writing, in a language and manner understandable to the ~~patient person~~, including the reasons for the decision.

Effective Date: August 18, 1999, amended effective _____

RULES
for the
ADMINISTRATION OF NONEMERGENCY INVOLUNTARY PSYCHIATRIC MEDICATIONS

1. POLICY STATEMENT

The Department of Mental Health (DMH) is committed to providing voluntary mental health care in a service system that respects individuals' health, safety, and dignity. DMH recognizes the right of a legally competent person to make decisions regarding medication. At the same time DMH acknowledges that involuntary care is currently unavoidable in certain circumstances as set forth in Title 18 of the Vermont Statutes Annotated. DMH continues to work toward the development of a service system in which coercion and involuntary care will no longer be necessary. Until that ideal is achieved, DMH will strive to provide involuntary care found to be necessary in a manner that affords as much protection as possible for the respect, dignity, and rights of the individual.

2. AUTHORITY

This rule is adopted pursuant to 18 V.S.A. § 7628 and Act 27 (2023).

3. DEFINITIONS

- 3.1. *The Commissioner:* The Commissioner of DMH or a designee as authorized by 18 V.S.A. § 7401(13).
- 3.2. *Competence:* A person is competent if a person is able to make a decision regarding medication and to appreciate the consequences.
- 3.3. *Court Order:* An order from the criminal court or the family court authorizing the DMH to administer involuntary medication to the person named in the order.
- 3.4. *Designated Facility:* A hospital, forensic facility (as defined by Act 27 of 2023), medical psychiatric unit in a correctional facility, or other facility authorized by statute to administer nonemergency involuntary psychiatric medications. A Designated Facility shall meet the requirements of this protocol, including the requisite trained staff, medical personnel and physical space and as designated by the Commissioner to provide care for a patient with mental illness.
- 3.5. *DMH:* The Department of Mental Health.
- 3.6. *Impartial Evaluator:* A contracted individual not employed by DMH or under the supervision of the Commissioner, who has no prior personal knowledge of the circumstances under review.
- 3.7. *Medical Personnel:* A physician, physician assistant, advance practice registered nurse,

registered nurse, or psychiatric technician/mental health specialist.

- 3.8. *Person*: An individual who is the subject of a court order authorizing DMH to administer involuntary medication to that individual.
- 3.9. *Qualified Practitioner*: An advance practice registered nurse or physician assistant who is licensed by the State of Vermont and who is appropriately credentialed to provide the psychiatric services described in this Rule.
- 3.10. *Treatment Team*: The Person's community and/or treating psychiatrist(s), or other Qualified Practitioner, case manager and any other individual the community treatment team deems clinically appropriate. If the Person does not have a treatment team in the community, the members of the team will be the person's inpatient or residential facility treating psychiatrist, or other Qualified Practitioner, case manager and any other individual deemed clinically appropriate.

4. NOTICE OF INTENT TO ADMINISTER MEDICATION

- 4.1. Prior to executing a court order authorizing the administration of involuntary medication,
- 4.1.1. DMH shall:
- a. Allow the person's legal counsel twenty-four hours to inform the person of the court's order; and
 - b. Notify the person's treatment team of the court order.
- 4.1.2. The person's treating physician or Qualifying Practitioner shall meet with the person:
- a. After the person has been informed by their legal counsel of the court order; or
 - b. After the person's legal counsel has had twenty-four hours to inform the person of the court order, regardless of whether the legal counsel has chosen to meet with the person.
- 4.1.3. The treatment team must:
- a. Inform the person orally and in writing in a language and in a manner understandable to the person of:
 - i. the type of medication to be administered;
 - ii. the dose that will be administered;
 - iii. the method of delivery;
 - iv. the route of delivery;
 - v. the frequency of delivery;
 - vi. the intended effects;
 - vii. any risks in keeping with standard medical practice, including

likely side effects, unlikely but serious side effects, health problems that might be encountered, common drug interactions including those of street drugs and alcohol, and in the case of all women of child bearing age, the effects of neuroleptics on a fetus or nursing child; and

- b. Offer the person an opportunity to take oral medication unless the court order authorizes the administration of a long-acting medication which can only be administered by injection.

5. ADMINISTRATION OF NONEMERGENCY MEDICATION

- 5.1. The physician or Qualifying Practitioner writing the medication order for the medication shall be responsible for assessing and documenting the following:
 - 5.1.1. The person's current physical health status;
 - 5.1.2. Whether the person is currently taking any other medications;
 - 5.1.3. The person's history of side effects from medication;
 - 5.1.4. Whether the person is pregnant if a woman of child bearing age;
 - 5.1.5. The person's medical history, including any history of substance abuse; and
 - 5.1.6. That the medication order is in compliance with the court's medication order with respect to the type of medication, the dosage, the length of administration and the method of administration.
- 5.2. The treating physician or Qualified Practitioner shall conduct monthly reviews of the medication to assess the continued need for involuntary medication, the effectiveness of the medication, the existence of any side effects, and shall document this review in detail in the person's chart.
- 5.3. The treating physician or Qualified Practitioner shall provide written notice to the court to terminate the medication order when involuntary medication is no longer required.
- 5.4. The treatment team shall:
 - 5.4.1. Make best efforts to obtain the person's preference on the manner of medication administration after the court issues an order granting the application and immediately prior to the administration of medication;
 - 5.4.2. Consider the current, written medical history of the patient that includes whether the patient has a history of trauma;
 - 5.4.3. Have at least one member present when the medication is administered and at the

time of release; and

- 5.4.4. Assure that the person has the opportunity to choose a support person, to be present to offer emotional support when the medication is administered. If the chosen support person is not available within a reasonable period of time or interferes with the administration of medication, or the frequency of administration precludes the presence of the support person each time, medication may be administered without the support person's presence.

5.5. Location

- 5.5.1. Medications must be administered at a Designated Facility. The medication must be administered in an area of the facility that provides the person with privacy.

A sheriff may transport the person to or from the Designated Facility if, and only if, the person's treating physician, Qualified Practitioner, or another member of the treatment team makes an individualized determination, documented in the person's chart, that physical restraint is necessary to prevent the person from inflicting serious physical injury to themselves or others.

- 5.5.2. If the person is transported by a sheriff, a member of the treatment team shall be present when the sheriff picks up the person for transport and will accompany the person during the transport, if the parties agree.

5.6. Oral Medication

- 5.6.1. The Medical Personnel or Qualified Practitioner who administers medication to the person shall be trained in the administration of medication when treating a resistant person.

- 5.6.2. The Medical Personnel or Qualified Practitioner shall:

- a. Verify that the person is the subject of a current involuntary medication order;
- b. Verify that the proper medication is provided to the person in the proper dosage; and
- c. Follow clinically appropriate practices and procedures for the administration of oral medication.

- 5.6.3. The Medical Personnel or Qualified Practitioner may perform a mouth check to verify that the person has swallowed the medication.

- a. If the person refuses to comply with a mouth check, then the treatment team is not required to offer voluntary oral medication the next time medication is administered but may do so at their discretion.
- b.

- 5.6.4. After administering the medication, a facility staff member shall personally observe the person long enough to ensure there are no adverse side effects and to

ensure safety.

5.7. Injectable Medication

5.7.1. The Medical Personnel or Qualified Practitioner who administers the medication to the person shall be

trained in the administration of administration of medication when treating a resistant person.

5.7.2. The Medical Personnel or Qualified Practitioner shall:

- a. Verify that the person is the subject of a current involuntary medication order;
- b. Verify that the proper medication is prepared in the proper dosage;
- c. Fully inform the person of all aspects of the procedure;
- d. Give the person a choice of clinically appropriate injection sites and follow that preference if medically safe;
- e. Follow clinically appropriate practices and procedures for the administration of injectable medication;
- f. Be of the gender chosen by the person receiving the medication if at all possible;
- g. Ensure that a physician is immediately accessible; and
- h. Be responsible for assuring that a support of the person's choosing is present when the medication is administered, unless the support person interferes with the administration of the medication or, the frequency of administration precludes the presence of the support person each time.

5.7.3. The Medical Personnel or Qualified Practitioner shall be accompanied by at least one health professional of the gender chosen by the person .

5.7.4. After administering the medication, a facility staff member shall:

- a. personally observe the person long enough to ensure there are no adverse side effects endangering safety;
- b. offer emotional support to the person.

5.7.5. All procedures shall be documented in accordance with standard medical practice.

6. FUTURE ADMINISTRATION OF INVOLUNTARY MEDICATION

6.1. Where the court's medication order authorizes future administration of involuntary medication, the treating physician shall execute and file with the Commissioner a certification executed under penalty of perjury stating the following:

6.1.1. The person has refused medication;

6.1.2. The person is not competent to make a decision regarding medication and to

appreciate the consequences;

- 6.1.3. The proposed medications, the dosage range, length of administration and method of administration; and
- 6.1.4. The substantial probability that in the near future the person will pose a danger of harm to self or others if not involuntarily medicated.

6.2. Within 24 hours of receipt of the physician's certification, the Commissioner shall provide the amount of notice required by the court order to the person, the person's legal counsel and the court.

6.2.1. The notice shall state that the person may request an immediate hearing to contest the order.

6.2.2. The person may be admitted to a Designated Facility on the date specified in the notice for up to 72 hours in order to administer involuntary medication.

6.3. The procedures set forth in Section 6 of these rules shall be followed for any person subject to a future administration of involuntary medication.

7. USE OF RESTRAINTS WHEN ADMINISTERING NONEMERGENCY INVOLUNTARY MEDICATION

7.1. Restraints may be used only pursuant to the Regulation Establishing Standards for Emergency Involuntary Procedures which can be found on DMH's website.

8. DISCHARGE OF PERSON NOT SUBJECT TO ORDER OF HOSPITALIZATION

8.1. If a person is brought into the Designated Facility only pursuant to a medication order, a physician or Qualified Practitioner must determine the amount of time that the person will be required to stay at the facility prior to discharge, but in no case longer than the time period allowed in the court order. This decision shall be based on appropriate clinical practices and procedures regarding the discharge of a person who has received the type of medication administered to the person.

8.2. Prior to discharge, the person shall receive the necessary counseling and assistance to support the person's comfort.

8.3. Prior to discharge, a member of the treatment team shall provide the person with written instructions regarding:

8.3.1. Side effects;

8.3.2. Required after-care;

8.3.3. A name and phone number to contact if the person has any questions or

concerns or starts to experience side effects;

8.3.4. Grievance procedures; and

8.3.5. Follow-up with the community mental health center.

8.4. A physician or Qualified Practitioner must approve the person's release after making a determination that there are minimal clinical risks.

8.5. A member of the treatment team shall arrange transportation to return the person to their residence. If the person does not have housing available, a member of the treatment team shall arrange temporary housing for the person.

9. COMPLIANCE AND ENFORCEMENT

9.1. A member of the treatment team shall report to the Commissioner every time a person is administered involuntary medication in a designated facility within seventy-two hours of entering the facility.

9.2. The Commissioner shall review on a periodic basis every instance of a person being administered involuntary medication in a designated facility.

9.3. The Commissioner shall conduct periodic reviews of every person who is subject to an involuntary medication order.

9.4. The Commissioner may revoke a facility's designated status for noncompliance with this rule.

9.5. Any person who is subject to an involuntary medication order may file a grievance with the appropriate agency alleging a violation of this protocol. The grievance must be filed within ninety (90) days of the action that is being grieved. This time limit may be extended if the person did not know or understand the right to appeal. The agency shall report the filing and substance of a grievance to the Commissioner within seventy-two hours of receiving the grievance.

9.6. Within thirty (30) days of receiving the grievance, the Designated Facility shall notify the person of its decision in writing, in a language and manner understandable to the person, including the reasons for the decision.

9.7. The decision made by the Designated Facility concerning the grievance may be appealed to the Commissioner. Any such appeal must be filed within thirty (30) days of the day the person received written notice of the decision.

9.8. Upon receipt of the appeal, the Commissioner shall assign an impartial evaluator to conduct a review of the appealed incident. Within thirty (30) days of receipt of the appeal assignment, the evaluator shall recommend to the Commissioner whether to affirm or change the decision of the agency or designated facility. Within ten (10) days of receiving the evaluator's decision, the Commissioner shall notify the person of the

Commissioner's decision in writing, in a language and manner understandable to the person, including the reasons for the decision.

Effective Date: August 18, 1999, amended effective _____

The Vermont Statutes Online

The Vermont Statutes Online does not include the actions of the 2024 session of the General Assembly. We expect them to be updated by November 1st.

NOTE: The Vermont Statutes Online is an unofficial copy of the Vermont Statutes Annotated that is provided as a convenience.

Title 18 : Health

Chapter 181 : Judicial Proceedings

(Cite as: 18 V.S.A. § 7628)

§ 7628. Protocol

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

(Added 1997, No. 114 (Adj. Sess.), § 4.)

No. 27. An act relating to establishing a forensic facility.

(S.89)

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

Sec. 1. LEGISLATIVE INTENT

It is the intent of the General Assembly that an initial forensic facility be authorized and operational beginning on July 1, 2024 in the nine-bed wing of the current Vermont Psychiatric Care Hospital. This wing shall be relicensed as a therapeutic community residence and shall provide a safe environment for both clients and staff. Any comingling of staff between the psychiatric hospital wings and the forensic facility shall be consistent with the requirements of any applicable collective bargaining agreements.

Sec. 2. CERTIFICATE OF NEED; EXCLUSION

Notwithstanding any law to the contrary, the Department of Mental Health and the Department of Disabilities, Aging, and Independent Living's joint establishment of a nine-bed forensic facility within a wing of the existing Vermont Psychiatric Care Hospital is excluded from the certificate of need process prescribed in 18 V.S.A. chapter 221, subchapter 5.

Sec. 3. RULEMAKING; CONFORMING AMENDMENTS

(a) On or before August 1, 2023, the Commissioner of Mental Health shall file an initial proposed rule amendment with the Secretary of State pursuant to 3 V.S.A. § 836(a)(2) to amend the Department of Mental Health, Rules for the Administration of Nonemergency Involuntary Psychiatric Medications (CVR

13-150-11) for the purpose of allowing the administration of involuntary medication at a forensic facility.

(b) On or before September 1, 2023, the Commissioners of Mental Health and of Disabilities, Aging, and Independent Living shall begin to draft proposed amendments to the Department of Disabilities, Aging, and Independent Living, Licensing and Operating Regulations for Therapeutic Community Residences (CVR 13-110-12) for the purposes of creating a forensic facility section of the rule that includes allowing the use of emergency involuntary procedures and the administration of involuntary medication.

Sec. 4. PRESENTATION; FORENSIC FACILITY PROGRAMMING

On or before February 1, 2024, the Agency of Human Services shall present the following information to the House Committees on Corrections and Institutions, on Health Care, on Human Services, and on Judiciary and to the Senate Committees on Health and Welfare, on Institutions, and on Judiciary:

(1) a plan for staffing and programming at the forensic facility, including whether any specialized training will be required for staff members and whether any services provided at the forensic facility will be contracted to third parties;

(2) whether any additional resources are needed for the operation of the forensic facility; and

(3) an assessment of laws, regulations, rules, and policies governing psychiatric hospitals and therapeutic community residences to determine

whether there are any conflicts with serving two populations in the same facility.

Sec. 5. REPORT; FORENSIC FACILITY

Annually, on or before January 15 between 2025 and 2030, the Departments of Mental Health and of Disabilities, Aging, and Independent Living shall submit a report to the House Committees on Human Services and on Judiciary and to the Senate Committees on Health and Welfare and on Judiciary containing:

(1) the average daily census at the forensic facility, including trends over time;

(2) the number of individuals waitlisted for the forensic facility and where these individuals receive treatment or programming while waiting for a bed at the forensic facility;

(3) aggregated demographic data about the individuals served at the forensic facility; and

(4) an account of the number and types of emergency involuntary procedures used at the forensic facility.

Sec. 6. WORKING GROUP ON POLICIES PERTAINING TO

INDIVIDUALS WITH INTELLECTUAL DISABILITY WHO ARE
CRIMINAL-JUSTICE INVOLVED

(a) Creation. There is created the Working Group on Policies Pertaining to Individuals with Intellectual Disabilities Who Are Criminal-Justice Involved.

The Working Group shall assess whether a forensic level of care is needed for individuals with intellectual disabilities who are charged with a crime of violence against another person, have been determined incompetent to stand trial or adjudicated not guilty by reason of insanity, and are committed to the custody of the Commissioner of Disabilities, Aging, and Independent Living. If it is determined that forensic-level care is needed for such individuals, the Working Group shall propose legislation establishing the process and criteria for committing such individuals to a forensic facility. In developing legislation, the Working Group shall refer to earlier drafts of this act discussed by the General Assembly in 2023.

(b) Membership.

(1) The Working Group shall be composed of the following members:

(A) a representative, appointed by the Disability Law Project of Vermont Legal Aid;

(B) a representative, appointed by the Developmental Disabilities Council;

(C) a representative, appointed by the Green Mountain Self-Advocates;

(D) a representative, appointed by Vermont Care Partners;

(E) a representative, appointed by the Vermont Crisis Intervention Network;

(F) the Commissioner of Disabilities, Aging, and Independent Living or designee;

(G) the Commissioner of Mental Health or designee;

(H) a representative, appointed by the Center for Crime Victim Services;

(I) the President of the Vermont State Employees' Association or designee;

(J) the Executive Director of the Office of Racial Equity or designee;

(K) the Chief Superior Judge or designee;

(L) two members of the House of Representatives, one of whom is from the House Committee on Human Services and one of whom is from the House Committee on Judiciary, appointed by the Speaker; and

(M) two members of the Senate, one of whom is from the Senate Committee on Health and Welfare and one of whom is from the Senate Committee on Judiciary, appointed by the Committee on Committees.

(2) In completing its duties pursuant to this section, the Working Group, to the extent feasible, shall consult with the following individuals:

(A) a psychiatrist or psychologist with experience conducting competency evaluations under 1987 Acts and Resolves No. 248;

(B) individuals with lived experience of an intellectual disability who have previous experience in the criminal justice system or civil commitment system, or both;

(C) family members of individuals with an intellectual disability who have experience in the criminal justice system or with competency evaluations under 1987 Acts and Resolves No. 248;

(D) the Executive Director of the Department of State's Attorneys and Sheriffs;

(E) the Defender General;

(F) the Commissioner of Corrections; and

(G) the State Program Standing Committee for Developmental Services.

(c) Powers and duties. The Working Group shall assess the need for a forensic level of care for individuals with an intellectual disability, including:

(1) the extent to which a forensic facility addresses any unmet needs or gaps in resources for individuals with intellectual disabilities;

(2) if the Working Group determines there is a need for individuals with an intellectual disability to receive programming in a forensic facility, the specific circumstances under which an individual committed to the custody of the Commissioner of Disabilities, Aging, and Independent Living could be placed in a forensic facility;

(3) any amendments to 18 V.S.A. chapter 206, including amendments needed to ensure due process prior to and during the commitment process, regardless of whether the Working Group determines that a need for forensic-level care exists;

(4) the roles of Vermont Legal Aid, an ombudsman, or Disability Rights Vermont in serving individuals with intellectual disabilities placed in a forensic facility;

(5) necessary changes to 13 V.S.A. chapter 157; and

(6) investments, policies, and programmatic options for high-quality community-based supports for at-risk individuals committed to the custody of the Commissioner of Disabilities, Aging, and Independent Living.

(d) Assistance. The Working Group shall have the administrative, technical, and legal assistance of the Department of Disabilities, Aging, and Independent Living.

(e) Report. On or before December 1, 2023, the Working Group shall submit a written report to the House Committees on Human Services and on Judiciary and to the Senate Committees on Health and Welfare and on Judiciary with its findings and any recommendations for legislative action, including proposed legislative language.

(f) Meetings.

(1) The representative of the Department of Disabilities, Aging, and Independent Living shall call the first meeting of the Working Group to occur on or before July 10, 2023.

(2) The Committee shall select a chair from among its members at the first meeting.

(3) A majority of the membership shall constitute a quorum.

(4) The Working Group shall cease to exist on July 1, 2024.

(g) Compensation and reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Working Group serving in the member's capacity as a legislator shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 23 for not more than 14 meetings. These payments shall be made from monies appropriated to the General Assembly.

(2) Members of the Working Group not otherwise compensated for their participation in the Working Group shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than 14 meetings. These payments shall be made from monies appropriated to the Department of Disabilities, Aging, and Independent Living.

(h) Definitions.

(1) As used in this section, "forensic facility" means a residential facility, licensed as a therapeutic community residence as defined in 33 V.S.A. § 7102(11), for an individual:

(A) with a mental health condition or intellectual disability, if the General Assembly determines that commitment to a forensic facility is appropriate for an individual with an intellectual disability;

(B) who is charged with a crime of violence against another person and the individual is assessed not competent to stand trial or was adjudicated not guilty by reason of insanity; and

(C) who requires treatment or programming within a secure setting for an extended period of time.

(2) As used in this subsection, "secure" has the same meaning as in 18 V.S.A. § 7620.

* * * Effective Date * * *

Sec. 7. EFFECTIVE DATE

This act shall take effect on passage.

Date Governor signed bill: May 30, 2023

The Vermont Statutes Online

The Vermont Statutes Online does not include the actions of the 2024 session of the General Assembly. We expect them to be updated by November 1st.

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Title 3 : Executive

Chapter 025 : Administrative Procedure

Subchapter 001 : General Provisions

(Cite as: **3 V.S.A. § 801**)

§ 801. Short title and definitions

(a) This chapter may be cited as the “Vermont Administrative Procedure Act.”

(b) As used in this chapter:

(1) “Agency” means a State board, commission, department, agency, or other entity or officer of State government, other than the Legislature, the courts, the Commander in Chief, and the Military Department, authorized by law to make rules or to determine contested cases.

(2) “Contested case” means a proceeding, including but not restricted to rate-making and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.

(3) “License” includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law.

(4) “Licensing” includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(5) “Party” means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(6) “Person” means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(7) “Practice” means a substantive or procedural requirement of an agency, affecting one or more persons who are not employees of the agency, that is used by the agency in the discharge of its powers and duties. The term includes all such

requirements, regardless of whether they are stated in writing.

(8) "Procedure" means a practice that has been adopted in writing, either at the election of the agency or as the result of a request under subsection 831(b) of this title. The term includes any practice of any agency that has been adopted in writing, whether or not labeled as a procedure, except for each of the following:

(A) a rule adopted under sections 836-844 of this title;

(B) a written document issued in a contested case that imposes substantive or procedural requirements on the parties to the case;

(C) a statement that concerns only:

(i) the internal management of an agency and does not affect private rights or procedures available to the public;

(ii) the internal management of facilities that are secured for the safety of the public and the individuals residing within them; or

(iii) guidance regarding the safety or security of the staff of an agency or its designated service providers or of individuals being provided services by the agency or such a provider;

(D) an intergovernmental or interagency memorandum, directive, or communication that does not affect private rights or procedures available to the public;

(E) an opinion of the Attorney General; or

(F) a statement that establishes criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections, in settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if disclosure of the criteria or guidelines would compromise an investigation or the health and safety of an employee or member of the public, enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons that are in an adverse position to the State.

(9) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy and that has been adopted in the manner provided by sections 836-844 of this title.

(10) "Incorporation by reference" means the use of language in the text of a regulation that expressly refers to a document other than the regulation itself.

(11) "Adopting authority" means, for agencies that are attached to the Agencies of Administration, of Commerce and Community Development, of Natural Resources, of Human Services, and of Transportation, or any of their components, the secretaries of those agencies; for agencies attached to other departments or any of their components, the commissioners of those departments; and for other agencies, the chief officer of the

agency. However, for the procedural rules of boards with quasi-judicial powers, for the Transportation Board, for the Vermont Veterans' Memorial Cemetery Advisory Board, and for the Fish and Wildlife Board, the chair or executive secretary of the board shall be the adopting authority. The Secretary of State shall be the adopting authority for the Office of Professional Regulation.

(12) "Small business" means a business employing no more than 20 full-time employees.

(13)(A) "Arbitrary," when applied to an agency rule or action, means that one or more of the following apply:

(i) There is no factual basis for the decision made by the agency.

(ii) The decision made by the agency is not rationally connected to the factual basis asserted for the decision.

(iii) The decision made by the agency would not make sense to a reasonable person.

(B) The General Assembly intends that this definition be applied in accordance with the Vermont Supreme Court's application of "arbitrary" in *Beyers v. Water Resources Board*, 2006 VT 65, and *In re Town of Sherburne*, 154 Vt. 596 (1990).

(14) "Guidance document" means a written record that has not been adopted in accordance with sections 836-844 of this title and that is issued by an agency to assist the public by providing an agency's current approach to or interpretation of law or describing how and when an agency will exercise discretionary functions. The term does not include the documents described in subdivisions (8)(A) through (F) of this section.

(15) "Index" means a searchable list of entries that contains subjects and titles with page numbers, hyperlinks, or other connections that link each entry to the text or document to which it refers. (Added 1967, No. 360 (Adj. Sess.), § 1, eff. July 1, 1969; amended 1981, No. 82, § 1; 1983, No. 158 (Adj. Sess.), eff. April 13, 1984; 1985, No. 56, § 1; 1985, No. 269 (Adj. Sess.), § 4; 1987, No. 76, § 18; 1989, No. 69, § 2, eff. May 27, 1989; 1989, No. 250 (Adj. Sess.), § 88; 2001, No. 149 (Adj. Sess.), § 46, eff. June 27, 2002; 2017, No. 113 (Adj. Sess.), § 3; 2017, No. 156 (Adj. Sess.), § 2.)



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Deadline For Public Comment

Deadline: Aug 07, 2024

The deadline for public comment has expired. Contact the agency or primary contact person listed below for assistance.

Rule Details

Rule Number:	24P023
Title:	Administration of Nonemergency Involuntary Psychiatric Medications.
Type:	Standard
Status:	Final Proposed
Agency:	Department of Mental Health, Agency of Human Services
Legal Authority:	18 V.S.A. § 7628 and Act 27 (2023), and 3 V.S.A. § 801(b)(11).
Summary:	This rule outlines the procedures for the administration of nonemergency involuntary psychiatric medications by the Department of Mental

Contact Information

Information for Primary Contact

PRIMARY CONTACT PERSON - A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE.

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Website Address: <https://mentalhealth.vermont.gov/policy-and-legislative-resources/rules>

[VIEW WEBSITE](#)

Information for Secondary Contact

SECONDARY CONTACT PERSON - A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FILINGS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON.

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Keyword Information

Keywords:

Involuntary
Psychiatric Medication
Forensic Facility
Mental Health

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PROPOSED STATE RULES



By law, public notice of proposed rules must be given by publication in newspapers of record. The purpose of these notices is to give the public a chance to respond to the proposals. The public notices for administrative rules are now also available on-line at <https://secure.vermont.gov/SOS/rules/> . The law requires an agency to hold a public hearing on a proposed rule, if requested to do so in writing by 25 persons or an association having at least 25 members.

To make special arrangements for individuals with disabilities or special needs please call or write the contact person listed below as soon as possible.

To obtain further information concerning any scheduled hearing(s), obtain copies of proposed rule(s) or submit comments regarding proposed rule(s), please call or write the contact person listed below. You may also submit comments in writing to the Legislative Committee on Administrative Rules, State House, Montpelier, Vermont 05602 (802-828-2231).

Administration of Nonemergency Involuntary Psychiatric Medications.

Vermont Proposed Rule: 24P023

AGENCY: Department of Mental Health

CONCISE SUMMARY: This rule outlines the procedures for the administration of nonemergency involuntary psychiatric medications by the Department of Mental Health Services (DMH). This rulemaking adds a "forensic facility," as defined by Act 27 (2023) to the list of facilities where involuntary psychiatric medications can be administered. Section 7: "USE OF RESTRAINTS WHEN ADMINISTERING NONE-EMERGENCY INVOLUNTARY MEDICATION" has been removed from this rule because these requirements are addressed in a separate DMH rule. Terms and formatting have also been updated.

FOR FURTHER INFORMATION, CONTACT: Karen Barber, Agency of Human Services, 280 State Drive, Ctr. Bldg., Waterbury, VT 05671 Tel: 802-461-8096 Email: karen.barber@vermont.gov URL: <https://mentalhealth.vermont.gov/policy-and-legislative-resources/rules>.

FOR COPIES: Nicole DiStasio, Agency of Human Services, 280 State Drive, Ctr. Bldg., Waterbury, VT 05671 Tel: 802-904-3226 Email: nicole.distasio@vermont.gov.