To: Legislative Committee on Administrative Rules
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Subject: Rule 26-E03, Vermont Homelessness Response Continuum Emergency Rules
Date: October 8, 2026

Dear Chair Squirrell and Members of the Committee:

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On behalf of our clients experiencing homelessness—and to uphold the basic tenets of our tripartite system of government—the ACLU of Vermont respectfully asks the Committee to object to the Agency of Human Services' Vermont Homelessness Response Continuum Emergency Rules.

As of October 5, 2026, 4,440 Vermonters were experiencing homelessness,[1] including over a thousand children[2] and over a thousand people with disabilities who have been unhoused for over a year.[3] Vermont has the fourth highest rate of homelessness in the nation, and our rate of homelessness is only getting worse.[4] Due to limited capacity in Vermont's homelessness response system, over half of the people experiencing homelessness are unsheltered,[5] and the most recent federal data available indicates that 6% of school-age children experiencing homelessness in Vermont are unsheltered.[6] Vermont has a dramatic deficit of affordable and available rental units and an inadequate supply of rental assistance.[7] Until the systemic problems in Vermont's housing market are

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[1] Institute for Community Alliances, Vermont Coordinated Entry Dashboard, CE Subpopulations by Region, https://icalliances.org/vermont-coordinated-entry-dashboard (last visited October 5, 2026) (sum of client count IDs, literally homeless).
[2] *Id.*, CE Age (24% of people on the Coordinated Entry list are under the age of 18).
[3] *Id.*, CE Subpopulations by Region (sum of people categorized as "chronically homeless").
[4] *Id.* (indicating that more people are entering "coordinated entry," the by-name list of people experiencing or at risk of homelessness, than the number exiting to permanent housing).
[5] As of October 5, 1,074 people experiencing homelessness were sheltered in motels through the Vermont Homelessness Response Continuum. See https://dcf.vermont.gov/oeo/programs/VHRC. As of September 30, community-based shelter capacity was limited to 689 households. See Department for Children and Families, Monthly Housing Report (Sept. 30, 2026), https://dcf.vermont.gov/oeo/resources/reports/Act143. Compared to the estimated number of people experiencing homelessness based on Coordinated Entry data, capacity in the VHRC and community-based shelters is less than 50% of the number of people who are categorized as "literally homeless."
[6] SchoolHouse Connection, Child and Youth Homelessness Data Profiles, Vermont (Sept. 17, 2024), https://public.tableau.com/app/profile/schoolhouseconnection/viz/ChildandYouthHomelessnessDataProfiles/National.
[7] See, e.g., National Low Income Housing Coalition, The GAP Vermont, available at https://nlihc.org/gap/state/vt (showing that Vermont has a deficit of 11,597 affordable and available rental units for extremely low-income renters); U.S. Dep't of Hous. and Urban Dev't, Housing Choice Voucher Data Dashboard, slide 5, New Admission Trends, available at

addressed—structural problems that have built up over the course of decades—our homelessness crisis will continue unabated. But in the interim, the Vermonters most directly impacted by these structural deficiencies, including extremely low-income families with children and people with disabilities, are in desperate need of shelter. Without it, their lives, their liberty, and their property are at risk.

During the 2025-2026 session, in an effort to better respond to Vermont's homelessness crisis, the Legislature established the Vermont Homelessness Response Continuum ("VHRC" or the "Program"). The VHRC's purpose, according to Act 143 (2026), is to eliminate unsheltered homelessness and make "homelessness in Vermont be rare, brief, and nonrecurring." Act 143, § 2. The Legislature's stated goals were to implement a "continuum of supports and services" to provide a "stable pathway to permanent housing" and meet "the specific needs of households experiencing homelessness," in addition to "reduc[ing] reliance on the inefficient use of hotel and motel rooms for emergency housing." *Id.*

But the Department for Children and Family's ("DCF" or "Department") emergency rules, implemented on September 1:

- fail to implement any aspect of the Continuum other than the reduction in capacity the "Level 4" emergency housing motel program,[8] reducing capacity in Vermont's homelessness response system contrary to Act 143's purpose of ending unsheltered homelessness;
- create barriers to accessing assistance for otherwise eligible households—in contravention of legislative intent;
- fail to provide meaningful access to the Continuum for households with disabilities, a violation of Act 143 and the Agency's affirmative obligations pursuant to Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973; and
- arbitrarily fail to adequately channel the Department's discretion to approve or deny extension requests for emergency housing for people with disabilities whose health is at imminent risk and for households with children—leading to unconscionable results that are causing immediate and long-term harm to some of the most vulnerable Vermonters experiencing homelessness.

There are innumerable other ways that the rules do not comport with legislative intent, many captured in a chart in Appendix A.

In this memo, Section I will discuss several rules that are contrary to the overall goals of Act 143 or otherwise contrary to legislative intent. Section II will address the irrationality of the extension rule.

[8] The Legislature drafted Act 143 to include a full range of services, including homelessness prevention and diversion, community-based shelters, emergency housing in hotels and motels, supportive services, rental assistance, and permanent supportive housing. *See generally* 33 V.S.A. §§ 2201-2216. But as of September 1, 2026, the Department's rules selectively and exclusively implement "Level 4" emergency housing in hotels and motels, including a reduction in motel capacity from 1,100 rooms in fiscal year 2026 to 700 rooms in fiscal year 2027.

I. The rules are contrary to the Legislature's intent.

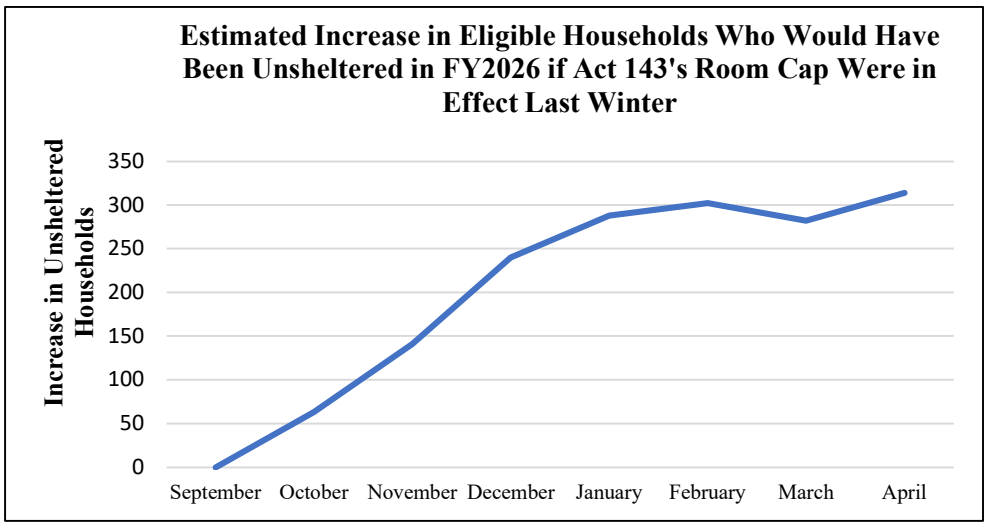
The Vermont Constitution directs that the "Legislative, Executive, and Judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to the others. Vt. Const. ch. II, § 5. This separation of powers is "guarded by a series of checks and balances so adjusted as to avoid usurpation of power by any one branch." *Hartness v. Black*, 95 Vt. 190, 197 (1921). The Legislative Committee on Administrative Rules' ability to object to rules is such a check—and it is essential to preserve our Constitution's promise of separation of powers when an Agency promulgates rules that do not conform to the Legislature's intent. *See Protect Our Wildlife v. Fish & Wildlife Bd.*, 2026 VT 21, ¶ 27. In this instance, the Agency's rules clearly contradict legislative intent, and objection is warranted. This section will provide an analysis of several rules that run counter to the intent of the Legislature as to capacity in the system, accessibility for people with disabilities, and the administratively burdensome needs assessment process. Other rules that are contrary to the intent of the Legislature are summarized in a table in Appendix A.

a. Part 8, Rule 3.00, Level 4 Services – Hotels and Motels. The Agency's emergency rules fail to implement the Program to the fullest extent of the Agency's ability, and instead, the rules only reduce access to shelter in hotels and motels.

Section 7 of Act 143 recognizes that the Department and community partners do not immediately have the capacity to fully implement the Continuum on July 1, 2026, but it also specifically states that the Office of Economic Opportunity ("OEO") "shall implement the Program to the fullest extent of [its] ability in fiscal year 2027 while developing the capacity to fully implement the Program in fiscal year 2028." The Legislature did not authorize the Agency to selectively and exclusively implement a reduction in emergency housing capacity through limits on motel stays, caps on the use of motel rooms, and the implementation of administrative barriers to access the Program while failing to implement expanded prevention, diversion, sheltering, and permanent housing programs—programs needed to ensure that unsheltered homelessness does not increase dramatically due to the reduction in motel capacity.

Rule 3.00 of Part 8 of the VHRC emergency rules incorporates the cap on the number of rooms identified in Act 143 without making any exceptions to accommodate for the Agency's failure to implement other components of Act 143. According to the emergency rules, no other levels of service in the Continuum will be implemented until state fiscal year 2027. *See* Part 5, Level 1 Services – Prevention and Diversion ("Notwithstanding anything to the contrary in Act 143 or these rules, for state fiscal year 2027, community partners providing services listed in section 1.00 of this Part and other similar services shall do so in accordance with the terms of their Housing Opportunity Program Grant."); Part 6, Level 2 Services – Shelter Services ("Notwithstanding anything to the contrary in Act 143 or these rules, for state fiscal year 2027, community partners providing emergency shelter shall do so in accordance with the terms of their Housing Opportunity Program Grant."); Part 7, Level 3 Services – Specialized Shelter Services ("Notwithstanding anything to the contrary in Act 143 or these rules, for state fiscal year 2027, community partners providing services comparable to those described in section 1.0 of this Part shall do so in accordance with the terms of their AHS grants.").

To anticipate how the reduction in motel rooms is likely to impact unsheltered homelessness in the absence of significantly increased capacity in the shelter system, this chart compares the motel program's monthly total household count from last fiscal year to the new room caps to determine the likely increase in the number of households who will go without shelter, including families with children and people with disabilities.



33 V.S.A. § 2202(c) clearly states that the VHRC "*shall* (1) provide temporary emergency housing to eligible households experiencing homelessness or at imminent risk of homelessness;" *and* "(2) reduce reliance on hotels and motels for emergency housing assistance" (emphasis added). To fulfill its duty to ensure that households experiencing homelessness are provided with emergency housing, the Agency should amend Rules 2.00 and 3.00 of Part 8 to provide as follows:

> In fiscal year 2027, this Rule shall be subject to waiver when capacity in other sheltering options is inadequate to meet the level of need.

Increasing unsheltered homelessness by rushing to implement rules to limit motel usage while drafting no rules to implement the prevention, diversion, sheltering, and permanent housing improvements in Act 143 is antithetical to the Legislature's intent. LCAR should object to Part 8, Rule 3.00's strict implementation of room caps.

b. Part 8, Level 4 Services – Hotels and Motels. The VHRC rules fail to adequately incorporate the Agency's affirmative obligation to provide reasonable modifications to people with disabilities and to refrain from discriminating against people with disabilities.

The text of Act 143 incorporates the already-existing obligation for OEO and community partners to comply with the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101-12213, and Section 504 of the Rehabilitation Act of 1973 ("Rehab Act"), 29 U.S.C. § 794, including the obligation to provide reasonable modifications to programs and services to avoid discrimination against eligible households with a member who has a disability. 33 V.S.A. §

2211(c). But the emergency rules fail to reflect the Legislature's intent to ensure that people with disabilities have meaningful access to the VHRC.

When Congress enacted the ADA, it concluded that "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals." 42 U.S.C. § 12101(a)(7). Regulations implementing Title II of the ADA prohibit public entities, "directly or through contractual or other arrangements," from utilizing "criteria or methods of administration" that (1) "have the effect of subjecting qualified individuals with disabilities to discrimination" or (2) "have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities." 28 C.F.R. § 35.130(b)(3). A public entity must "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d). The regulations require states and other public entities to make reasonable modifications in policies, practices, or procedures when such modifications are necessary to avoid discrimination on the basis of disability, including segregation, unless the state can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. 28 C.F.R. § 35.130(b)(7).

Similar to the ADA, the Rehab Act prohibits state and local governments and any entity receiving federal funding from engaging in discrimination on the basis of disability:

> No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . .

29 U.S.C. § 794(a).

The Rehab Act's implementing regulations bar recipients of federal funds from using methods of administration of programs and services that subject individuals to discrimination. 28 C.F.R. § 41.51(b)(3). A state agency or other recipient of federal funding "may not, in determining the site or location of a facility," choose locations that "have the effect" of excluding people with disabilities, "denying them the benefits of" a program, or otherwise subjecting them to discrimination. 45 C.F.R. § 41.51(b)(4)(i). Like the ADA regulations, the Rehab Act regulations require reasonable modifications in policies, practices, or procedures "when modifications are necessary to avoid discrimination on the basis of disability, unless the recipient [of federal financial assistance] can demonstrate that making the modifications would fundamentally alter the nature of the program or activity." 45 C.F.R. § 84.68. And finally, they also require state agencies and other recipients of federal financial assistance to administer their programs and activities "in the most integrated setting appropriate to the needs of qualified handicapped persons." 28 C.F.R. § 41.51(d).

Public entities are required to operate programs such that "when viewed in [their] entirety, [the program] is readily accessible to . . . individuals with disabilities." *Disabled in Action v. Bd. of Elections in N.Y.C.*, 752 F.3d 189 (2d Cir. 2014) (quoting 28 C.F.R. § 35.150(a)). Discrimination

is prohibited in the administration of state programs, regardless of whether private entities are used to deliver some of those services. *Disability Advocates, Inc. v. Paterson*, 598 F. Supp. 2d 289, 317-18 (E.D.N.Y. 2009), *vacated on other grounds sub nom.*, *Disability Advocates, Inc. v. N.Y. Coal. for Quality Assisted Living, Inc.*, 675 F.3d 149 (2d Cir. 2012).

The Second Circuit has held that "DOJ's regulations make clear that the inaccessibility of existing facilities is not an excuse, but rather, a circumstance that requires a public entity to take reasonable active steps to ensure compliance with its obligations under Section 504 and Title II." *Disabled in Action*, 752 F.3d at 200-01. For instance, in *Brooklyn Center for Independence of the Disabled v. Bloomberg*, the court looked to the City's emergency preparedness and sheltering system program "in its entirety" and held that the City's failure to have a sufficient number of accessible shelters, a sufficient number of accessible beds in shelters to accommodate the anticipated shelter population of people with disabilities, and its failure to track what shelter sites were accessible constituted a violation of the ADA. 980 F. Supp. 2d 588, 649 (S.D.N.Y. 2013).

And finally, where a person with a disability will likely experience "a decline in health, safety, or welfare that would lead to the individual's eventual placement in an institution," courts have found that reasonable modifications to ensure that people with disabilities can access community services may be necessary to fulfill the integration mandates of the ADA and Rehab Act. *See Davis v. Shah*, 821 F.3d 231, 260 (2d Cir. 2016) ("a plaintiff may state a valid claim for disability discrimination by demonstrating that the defendant's actions pose serious risk of institutionalization for disabled persons"). Courts have found to be reasonable modifications to expand existing services to meet the needs of people with disabilities, particularly when the modification aligns with the entities' own stated plans. *See, e.g.*, *Henrietta D. v. Bloomberg*, 331 F.3d 261, 279 (2d Cir. 2003) (upholding as a reasonable modification an order requiring the agency charged with connecting people with AIDS to needed services despite the City's argument that people without disabilities were equally unsuccessful in accessing benefits); *Haddad v. Arnold*, 784 F. Supp. 2d 1284, 1304-05 (M.D. Fla 2010) (providing a service that the state chose to include in its own service system to additional individuals is not a fundamental alteration); *Messier v. Southbury Training Sch.*, 562 F. Supp. 2d 294, 344-45 (D. Conn. 2008) (finding plaintiffs' requested service expansion, which was consistent with defendants' publicly stated plans to grow its community placement and services system for people with disabilities, was reasonable and not a fundamental alteration).

i. Part 8, Rule 7.00. The rules should incorporate the Department's affirmative duty to secure accessible rooms for people with disabilities.

Part 8, Rule 1.00, provides that, when a household's needs cannot be met by prevention, diversion, and community-based shelter, "Level 4" shelter in hotels and motels will be provided, "subject to availability of funds, capacity, and geographic accessibility." Rule 7.00 in Part 8 indicates that the Department shall determine which hotels and motels are approved for use under the Program.

According to the *2025 State of Homelessness in Vermont Report*, almost 50% of people experiencing homelessness in Vermont report having a serious mental illness,[9] over 30%

[9] Homelessness & Hous. All. of Vt., *2025 State of Homelessness in Vermont Report* 3 (July 2025).

reported having a physical disability,[10] and almost 22% reported having a developmental disability.[11] Unfortunately, even though the Department is aware that over half of the people experiencing homelessness have disabilities, it does not appear to have made affirmative efforts to secure an adequate number of accessible motel rooms for Level 4 services. Further, the Department has failed to provide reasonable accommodations to applicants in need of accessible rooms, including by reserving rooms at hotels or motels outside of its normal roster. As a result, Vermonters who use wheelchairs, including people with severe illnesses, have been found eligible for Level 4 motels but nonetheless have been left out on the streets, causing harm to their health, and, in some instances, hospitalization.

Part 8, Rule 7.00 should be amended to include the following as Rule 7.04:

> The Department shall enter into agreements with hotel and motel providers to ensure that an adequate number of accessible rooms are available, including but not limited to wheelchair-accessible rooms. As a reasonable accommodation, the Department shall ensure that no person is denied placement in a hotel or motel due to lack of an accessible room. It is not a fundamental alteration of the Program for the Department to pay more than $80 for a room, place an individual with a disability in a families-only motel, or place a household in a hotel or motel that does not typically participate in the VHRC.

LCAR should object to the rules as drafted to ensure that the Department meets its affirmative obligation to ensure that the Continuum is meaningfully accessible to people with disabilities.

ii. Part 8, Rule 5.00 – Extensions. Extensions should be mandatory where other shelter options are inaccessible to a household because of a household member's disability or to avoid serious risk of harm to the health of a household member with a disability.

Although Act 143 designates a durational limit on emergency housing in motels of 70 days between April 1 and November 30 of each year, 33 V.S.A. § 2212(a)(4)(A), it also incorporates extensions in 33 V.S.A. § 2212(b). The Legislature gave the Department the authority to set out criteria for extensions in rules. The non-exclusive list of criteria for extensions listed in 33 V.S.A. § 2212(b) are: (a) an eligible household actively awaiting placement in housing, treatment, or other services; (2) medical necessity; (3) lack of reasonable alternative accessible placements for a member of the eligible household with a disability; and (4) imminent risk to the health or safety of one or more of the eligible household's members.

The VHRC emergency rule at Part 8, Rule 5.01, does nothing more than mirror the statutory language, making issuance of extensions discretionary even in cases of "imminent risk" to a participant's health or safety that may lead to hospitalization or institutionalization and in situations where there are no other accessible placements for a person with a disability. In such cases, the duty to accommodate is not discretionary, but is mandatory as a reasonable

[10] *Id.* at 19.
[11] *Id.*

modification, and extensions must be granted. LCAR should object to Rule 5.01 and advise the Department to change the word "may" to "shall," at least as it relates to these two categories.

Further, the Rule 5.02 conditions eligibility for extensions on "making progress toward the goals identified in the housing plan" and Rule 5.05 makes the length of extensions dependent on "housing plan progress"—standards beyond what was contemplated by the language of 33 V.S.A. § 2212(b). This "progress" requirement is likely to create a disparate impact on people with disabilities. Rules 5.02 and 5.05 reflect an ableist mandate for participants in the VHRC to make progress at a rate that does not incorporate Act 143's understanding that households will only be able to participate in their housing plan "to the extent of the household's ability." *See* 33 V.S.A. § 2207(3). The rules' requirement that households make a showing of "progress" on their housing plan also fails to reflect the reality that people with disabilities are likely to struggle to find housing that meets any accessibility-related needs,[12] are disparately likely to experience discrimination in their housing search,[13] and, for households whose incomes are limited to Supplemental Security Income (a maximum monthly benefit of $1,049.68, composed of the $994 maximum federal benefit plus DCF's meager supplement of $55.68 through Vermont's Aid to the Aged, Blind or Disabled program), market rate housing is completely unaffordable, leaving them with few options. LCAR should object to Rules 5.02 and 5.05 and ask the Department to amend them to reflect Act 143's accommodating "to the extent of the household's ability" language.

iii. Part 4, Rule 2.01 – Required Supportive Services. Mandating disability-related services as a condition to receiving Program benefits unlawfully subjects people with disabilities to disparate treatment.

Eligibility requirements for the VHRC and Level 4 motels are, pursuant to Act 143, quite limited. To be eligible for the VHRC, pursuant to Act 143, a household need only reside in Vermont, agree to participate in coordinated entry (unless qualified for an exemption), develop a housing plan (unless qualified for an exemption), and abide by program rules. 33 V.S.A. § 2210(a). For a household in a Level 4 motel placement, pursuant to 33 V.S.A. § 2207(3), the participant shall participate in: "case management, planning for housing stability, and other services to the extent of the household's ability."

Act 143 defines "supportive services" as:

> individualized supports that assist a household in obtaining and maintaining housing, including: (A) intake assessments and services for diversion from homelessness; (B) housing needs assessments; (C) case management; (D) individualized household plans to address identified needs; (E) housing navigation services; (F) assistance obtaining and retaining housing, including financial assistance; (G) landlord-tenant outreach, education, and conflict

[12] Vermont Housing Finance Agency, *Vermont Housing Needs Assessment: 2025-2029* (June 2024), p. 87, available at https://vhfa.org/sites/default/files/publications/VT-HNA-2025.pdf.
[13] See Dep't of Hous. & Community Dev't, *State of Vermont Fair Housing Analysis, 2024 Update*, pp. 5, 75 (finding that 30% of Vermont survey respondents reported experiencing housing discrimination, and of those, 36% said the discrimination was based on disability—the highest rate of all protected classes).

> resolution; (H) *navigation* to other services and supports as identified in the household's housing plan, including economic benefits, peer-supported services, job training and employment services, services related to disability and independent living advocacy, and *referral* to health care assistance, including treatment for mental health conditions and substance use disorder; (I) progress monitoring of interventions; and (J) services to ensure continuity after a permanent placement.

33 V.S.A. § 2201(24) (emphasis added). These services are all directly housing-related, other than "navigation" and "referral" to any service related to a person's disability or health care needs. The Act in no way contemplates monitoring ongoing participation in disability-related or health-related services or achieving a particular treatment or health goal.

Although the definition of "supportive services" in Part 2 of the VHRC emergency rules directly references the definition in 33 V.S.A. § 2201(24), in practice, housing plans regularly include disability-related and health-related service goals. To ensure that people with disabilities are not subjected to disparate treatment, LCAR should object to Part 2's definition of supportive services and require the Agency to amend the definition to include the following clarifying statement: "no participant shall be required to participate in disability-related or health-related services as a condition for obtaining or maintaining any VHRC services."

c. Part 1, Rules 5.01-5.03: Prioritization and the Needs Assessment Screening Tool

As discussed previously, to be eligible for the VHRC, a household need only reside in Vermont, agree to participate in coordinated entry, develop a housing plan, and abide by program rules. 33 V.S.A. § 2210(a). "Upon assessing a household's needs," OEO or community partners "shall offer" to place eligible households in the "appropriate level of care." 33 V.S.A. § 2203(c). If an applicant household meets these basic eligibility criteria, the program "shall" provide emergency housing to eligible households "experiencing homelessness or at imminent risk of homelessness." 33 V.S.A. § 2202(c).

Assessing a household's needs, according to the terms of Act 143, is not a complicated multi-step process. 33 V.S.A. § 2216(5) describes the assessment as "a brief, standardized initial assessment form that may be completed by hand, electronically, or by telephone."

If there is limited capacity in the Program, 33 V.S.A. § 2211(a) allows for "prioritization" of services to applicant households that include a household member who is 65 years of age or older, has a disability, is a minor child, is pregnant, is experiencing domestic violence or other dangerous conditions, or is subject to eviction due to circumstances over which the household has no control.
The prioritization scheme is only applicable, pursuant to the framework of Act 143, if the VHRC has insufficient capacity to meet the needs of otherwise eligible applicants.

No further prioritization is contemplated by Act 143. The categories listed in 33 V.S.A. § 2211(a) are the households to be prioritized. The sole purpose of the "assessment of a household's needs," according to 33 V.S.A. § 2203(c), is to determine the appropriate level of service for each applicant: Level 1 prevention or diversion; Level 2 shelter; Level 3 specialized shelter, or Level 4 motel or hotel emergency housing.

Part 3, Rule 5.01, by contrast, introduces a "needs assessment screening tool established and maintained by the Department" that impermissibly supersedes the Legislature's prioritization framework outlined in 33 V.S.A. § 2211. Although the content of the needs assessment screening tool is not included in the rules, its basic outline is provided in DCF's procedures in the Vermont Homelessness Response Continuum Level Four Housing Guide (Initial, August 31, 2026).[14] According to the Guide, first, an applicant must be determined to be eligible for the VHRC. Second, they are then screened using a health checklist pursuant to Procedure 300.1. The health checklist includes a dozen invasive questions like "Are you or anyone in your household immunocompromised (infection risk)?" *Id.* at p. 10. This type of screening is far beyond what is contemplated by Act 143. Third, following the eligibility determination and health screening, according to Procedure 300.2, workers determine if eligible households include a person in a priority category—regardless of whether the Program is at capacity or not. *Id.* at p. 11. Fourth, after completing the eligibility interview, health checklist, and prioritization screening, applicant households are required to complete a "HOU-SING assessment" interview, sometimes a day or two later. *Id.* at p. 12. Rather than the "brief, standardized initial assessment" identified in 33 V.S.A. § 2216, the HOU-SING assessment includes a series of invasive questions. For instance, question "U" is, "What makes the current place unavailable or unsafe? What are you concerned may happen if you stay there tonight?" *Id.* at p. 13. The Department slots the applicant's answer into one of four preset categories, including, "[t]here is a credible risk of violence . . . but the danger is not immediately occurring," which generates a numerical score (credible risk of violence rates a 3 out of 4). *Id.* Based on the total score generated by the needs assessment questionnaire, the Department classifies the applicant as low, moderate, high, or critical risk. *Id.* at p. 15. Fifth, the household is finally routed to a screener who determines if the household's risk level is high enough to warrant placement in a motel. For example, according to Procedure 500.2, if a household is high risk, they will only be placed in a motel if there are at least 50 rooms available statewide. *Id.* at p. 16.

This is clearly not the "brief, standardized initial assessment" contemplated by Act 143.

Another alarming aspect of the needs assessment is its timing. The Department does not complete the needs assessment as part of the eligibility interview—it makes eligible applicants

[14] Department for Children and Families, *Vermont Homelessness Response Continuum Level 4 Guide*, available at https://outside.vermont.gov/dept/DCF/Shared%20Documents/OEO/VHRC/VHRC-Level-Four-Procedures-Initial-8.31.26.pdf?_gl=1*zp1mpj*_ga*MTczNDg3ODUzLjE3NTU1NDk3Mzk.*_ga_V9WQH77KLW*czE3ODg3ODM5MjkkbzYzOSRnMSR0MTc4ODc4Mzk3MCRqMTkkbDAkaDA.

wait, sometimes for days, to conduct its HOU-SING assessment. And eligible applicants are not provided with shelter in the interim. Rule 5.01 of Part 3 indicates that DCF will issue a written service agreement identifying the recommended service level and whether emergency housing placement is available up to ten calendar days *after* eligibility has been determined. Not only is this impermissible pursuant to Act 143, which promised nothing other than a "brief, standardized initial assessment," it clearly conflicts with 33 V.S.A. § 101(3), which mandates that "[a]ssistance and benefits shall be administered promptly, with due regard for the preservation of family life." Any delay—much less a delay of up to 10 days—in issuance of a benefit as important as emergency housing is contrary both to the Legislature's intent in Act 143 and to the law binding the Agency of Human Services.

II. The extension rule arbitrarily gives the Department discretion to deny shelter to families with children and people with disabilities at serious risk of experiencing significant harm to their health, hospitalization, or institutionalization.

As noted previously, Act 143 states that the "Department may grant extensions to the time limits established in subsection (a) of [33 V.S.A. § 2212] pursuant to criteria adopted in rule," including for households awaiting placement in housing, treatment, or other services, "medical necessity," "lack of reasonable alternative accessible placements for a member of the eligible household with a disability, and "imminent risk to the health or safety of one or more of the eligible household's members." 33 V.S.A. § 2212(b).

Rule 5.01 of Part 8 largely parrots the extension language in the statute. It states that the Department "may" grant extensions to the 70-day limit for emergency housing in hotels and motels, limiting eligibility for extensions to the four categories specified in the non-exclusive list in 33 V.S.A. § 2212(b). Rule 5.05 states that the Department "may approve an extension for a period determined appropriate based on the household's circumstances, housing plan progress, and continued need for assistance." Rather than meaningfully channel the Department's discretion such that an applicant can have a reasonable degree of certainty as to their eligibility for an extension, the rule makes approval or denial wholly arbitrary—even for families with children and people with disabilities at imminent risk. LCAR should object to the extension rule.

In Act 143, 33 V.S.A. § 2212(b), the Legislature clearly indicated that the Department has the authority to provide extensions for durationally limited VHRC services. Prior to the enactment of Act 143, the Department's position was that it had no authority to offer extensions to durationally limited General Assistance emergency housing benefits—even as a reasonable accommodation for people with disabilities at imminent risk of death or hospitalization and even for families with children.[15] The use of the term "may" in 33 V.S.A. § 2212(b) is clearly

[15] See, e.g., FH-B-05-26-464 (denying an extension as a reasonable accommodation to a person in a wheelchair who requires oxygen and had nowhere else to go); FH-M-04-26-415 (denying an extension as a reasonable accommodation to a mother of a child with disability-related needs with a documented accessibility barrier to staying in congregate shelter); FH-M-11-25-1299 (denying an extension as a reasonable accommodation to person who reported going to the Brattleboro Retreat three times due to being suicidal as the result of not having shelter); FH-T-03-26-277 (denying an extension as a reasonable accommodation to a person who was hospitalized numerous times while unsheltered and was a survivor of severe violence); FH-S-05-26-474 (denying an extension as a reasonable accommodation to a father with a disability and his daughter); FH-L08-26-710 (denying an extension to

designed to communicate to the Department that, in fact, it does have the ability to grant extensions. The meaning of the term "may" cannot reasonably be interpreted to mean that the Department should have unfettered discretion to approve or deny any particular extension request.

33 V.S.A. § 2212(b) authorizes the Department to promulgate more detailed criteria for extensions in rules. This requirement—to promulgate rules with specific criteria for extensions—is a clear indicating that the Legislature expected the Department to set out clear and non-arbitrary standards defining when extensions shall—rather than "may"—be granted. But the Department's rule does not create standards that adequately channel its discretion. And as a result, the Department's extension rule creates arbitrary and irrational risks and uncertainties for Vermonters experiencing homelessness.

In the Administrative Procedures Act, arbitrary is defined as:

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

3 V.S.A. § 801(13)(a). As detailed below, for people with disabilities at serious risk of significant harm to their health from being unsheltered, and for families with children, it is beyond factual dispute that they will experience significant and irreparable harm if extensions are not mandatory and there is no possible rational basis to make extensions discretionary for such households. Further, reasonable Vermonters—including the Governor—have indicated that failure to provide shelter to these particularly vulnerable groups makes no sense. LCAR should object to the extension rule's use of the term "may" rather than "shall" to appropriately limit the Department's discretion to mandate extensions for families with children and people with disabilities who health is at imminent risk.

a. The significant and irreparable harm of unsheltered homelessness—especially for children and people with disabilities—is beyond factual dispute.

In 2024, Vermont's State Health Assessment found that the "health impacts experienced by those who become unhoused are severe and multifaceted."[16] The report noted that being unhoused is "traumatizing" and makes it hard to "take care of health or well-being" because it is "difficult to make and keep medical appointments"; that "extreme weather effects are magnified when living outside"; and "chronic conditions and new illnesses flourish due to these factors."[17] The report included the following narrative describing the health impacts of unsheltered homelessness:

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parents of a newborn); FH-B-07-26-686 (denying an extension as a reasonable accommodation for a person whose medical providers attested that he needs an extension due to severe upper respiratory symptoms because, according to the Department, "under Act 143, the current rules limit petitioner to 80 nights of housing over the previous 12-month period and [] petitioner had exhausted this benefit as of July 9, 2026"); FH-M-07-26-665 (denying an extension as a reasonable accommodation for a person who uses insulin, which requires refrigeration).

[16] Vt. Dep't of Health, *2024 Vermont State Health Assessment Report*, at p. 20 (2024), available at https://www.healthvermont.gov/sites/default/files/document/2024-vermont-state-health-assessment-report.pdf.

[17] *Id.* at 78.

> It is hard to manage illnesses, take care of an injury or wound without it getting infected, or keep medications, especially those that need refrigeration. Some would rather be in jail than on the streets because that way they know they will have a meal and a place to sleep. Others generate crisis situations to go to the emergency department to be safe, sheltered, and away from extreme weather conditions: "If the only option that you might have for staying indoors when it's negative 10 outside is to figure out a health crisis so you can stay in the ER for the night, you're going to do that."[18]

Studies have consistently shown that unsheltered homelessness is associated with profound health disparities, including shorter life expectancy, higher morbidity, and increased usage of acute hospital services.[19] Homelessness makes it harder to access healthcare and manage complex health conditions.[20] The mortality ratios of people experiencing homelessness are two to five times higher than the general population.[21] Unsheltered older adults are significantly more likely to experience falls and are more than twice as likely to experience very low food security than their sheltered peers.[22] The Vermont Department of Health has found that homelessness exacerbates pre-existing healthcare problems.[23]

For children, homelessness has a profound impact on health and developmental outcomes. The stress of homelessness "can lead to potentially permanent harmful changes in brain and body function, in turn causing higher levels of stress-related chronic diseases later in life."[24] Infants experiencing homelessness are more frequently diagnosed with respiratory infections and fever, have more emergency department visits than their housed peers, and have higher annual health care spending.[25] Research has found that, of children experiencing homelessness under the age of five, over 75% have at least one major developmental delay, and, among teens experiencing homelessness, 24% are diagnosed with post-traumatic stress disorder.[26]

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[18] *Id.* at 80.
[19] Stafford, Amanda; Wood, Lisa, *Tackling Health Disparities for People Who Are Homeless? Start with Social Determinants.* INT. J. ENVIRON. RES. PUBLIC HEALTH 2017, 14(12), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5750953/.
[20] MACPAC, *Medicaid's Role in Housing* 1 (June 2021), https://www.macpac.gov/wp-content/uploads/2021/06/Medicaids-Role-in-Housing-1.pdf.
[21] Fazel, Seena; Geddes, John; Kushel, Margot, *The health of homeless people in high-income countries: descriptive epidemiology, health consequences, and clinic and policy recommendations.* LANCET Oct. 25, 2014; 384(9953) 1529-1540, available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4520328/#R39.
[22] Richards, J.; Kuhn, R., *Unsheltered Homelessness and Health: A Literature Review* 4. AJPM FOCUS 2023; 2(1):100043, https://www.sciencedirect.com/science/article/pii/S2773065422000414.
[23] Vt. Dep't of Health, *Health Needs of People who are Unhoused* 2 (May 2024), https://www.healthvermont.gov/sites/default/files/document/sha-data-brief-population-unhoused.pdf.
[24] Sandel, M., et al., *Compounding Stress: The Timing and Duration Effects of Homelessness on Children's Health*, Insights from Housing Policy Research (June 2015), https://www.childrenshealthwatch.org/wp-content/uploads/Compounding-Stress_2015.pdf.
[25] Clark, R., et al., *Infants Exposed to Homelessness: Health, Health Care Use, and Health Spending from Birth to Age Six*, HEALTH AFFAIRS, Vol. 38, No. 5 (May 6, 2019), available at https://www.healthaffairs.org/doi/10.1377/hlthaff.2019.00090.
[26] HCH Clinicians Network, *Mitigating Homeless Children's Risk for Developmental Delay*. HEALING HANDS, Vol. 13, No. 2 (Apr. 2009), available at https://nhchc.org/wp-content/uploads/2019/08/Apr09HealingHands.pdf.

The costs of unsheltered homelessness, both for people with disabilities at serious risk of harm to their health and for children, are significant. Looking to health care costs alone, in 2024, the Agency of Human Services noted that, for people with disabilities experiencing homelessness, "health care facilities are forced to delay discharges because of the lack of supportive settings available,"[27] and that "[i]n 2023, at times, there were over 150 subacute patients waiting in Vermont hospitals per day to be discharged or transferred to an appropriate level of care."[28] The Agency recognized that lack of shelter for people with disabilities at risk of hospitalization leads not only to "poorer health outcomes," it also leads to "higher health care costs."[29] A 2012 study estimating the cost of homelessness for children in Pennsylvania found that the average marginal cost per homeless child for costs other than emergency and transitional housing was $25,395—costs far greater than the cost of shelter or housing.[30]

For children, the long-term harm from homelessness includes its adverse impact on their education. In Vermont, the graduation rate of children experiencing homelessness is only 54%, compared to the overall graduation rate of 82%.[31] Chronic absence for students experiencing homelessness in Vermont is 59.44% compared to 23.98% of students overall.[32] Homelessness can also undermine academic success and increase the likelihood of suspension.[33] Although data specific to unsheltered children is not available, it is likely that the poor educational outcomes for unsheltered children are even worse.

b. The extension rule is irrational because it indicates that the Department may deny extensions for families with children and people with disabilities whose health is at imminent risk.

Despite the abundant evidence that there is no rational basis to deny extensions to families with children and people with disabilities at serious risk of harm to their health, the Department's rule makes extensions discretionary for such households without offering any rational basis for its decision.

In a letter to the Department dated September 8, 2026, pursuant to 3 V.S.A. § 840(e), the ACLU of Vermont submitted a request for an explanation of the VHRC emergency rules, including a concise statement of the principal reasons for the emergency rules and an explanation of why the Department overruled the arguments and considerations articulated in the written and oral comments submitted to the Department from June 16, 2026, to September 1, 2026. To date, the

[27] *Id*.
[28] *Id*.
[29] *Id*.
[30] Perlman, S. & Willard, J., *Estimated annual cost of child homelessness in Pennsylvania*, Policy Brief, People's Emergency Center (2012), https://homelesshub.ca/wp-content/uploads/2023/12/Cost-policy-brief-policy-2012-11_19.pdf.
[31] Schoolhouse Connection, Child and Youth Homelessness Data Profiles, Vermont – Child and Youth Homelessness – Graduation Rate (2022-2023), https://public.tableau.com/app/profile/schoolhouseconnection/viz/ChildandYouthHomelessnessDataProfiles/National.
[32] *Id.*, Vermont – Child and Youth Homelessness – Chronic Absence.
[33] Center for Advanced Studies in Child Welfare, *Homelessness as a Risk Factor for School Disciplinary Outcomes*. Minn Link, No. 56 (Fall 2022), https://drive.google.com/file/d/13wxgLXrhCysDcLNz9OHiwY-T4Br8Th_F/view?pli=1.

Department has not directly responded to the request. In an undated document posted on the Department's website entitled "Summary of Public Comments and DCF's Response,"[34] the Department states that Act 143 gives the Department the discretion to grant extensions to four specific categories of households and that the Department had no authority to expand its discretion beyond the four categories.[35] The Department indicated that, in response to feedback, it would not use an assessment score to determine eligibility for extensions.

The Department does not provide any reasoned basis for failing to provide extensions to any eligible household that includes a child or a person with a disability at serious risk of significant harm to their health, hospitalization, or institutionalization—because there is no rational basis for such a denial.

c. The Agency's rule does not make sense to reasonable Vermonters.

Reasonable Vermonters understand that it is completely irrational to deny shelter to children and people with disabilities whose health is at imminent risk. In response to the Department's brief and largely inaccessible public comment opportunity on a draft of the emergency rules for the VHRC, one Vermonter highlighted the emotional and financial toll of the Department's approach as follows: "Vermont will put people with cancer, wheelchairs, medical devices, babies, out into the woods or street."[36] A shelter provider submitted a comment pleading for extensions for "all children sleeping rough."[37] Another service provider opined that people who cannot survive or who will have catastrophic outcomes should not be relegated to the outdoors.[38] A total of 271 people from across Vermont signed a comment asking the Department to change its draft rules to eliminate arbitrary limits on emergency shelter, noting that people with disabilities would be at ongoing risk and people could die if they were forced to live outside.[39]

It is not just the reasonable Vermonters who submitted comments on the Department's draft emergency rules who understand that it is nonsensical to leave children and people with disabilities whose health is at imminent risk out on the street. On March 28, 2025, Governor Phil Scott signed Executive Order 03-25, waiving durational limits on emergency housing in hotels and motels for families with children under the age of 19 and "the most medically vulnerable" to "allow time for DCF to ensure these households have access to existing social services, healthcare and the supports needed to transition to suitable long-term housing, a family shelter placement or transition to a skilled nursing facility, as appropriate," and to administer the motel program in a manner "that substantially accomplishes the legislative purposes for which []

[34] Department for Children and Families, Summary of Public Comments and DCF's Response, https://outside.vermont.gov/dept/DCF/Shared%20Documents/OEO/VHRC/DCF-Response-Public-Comments.pdf?_gl=1*134p9xl*_ga*MTczNDg3ODUzLjE3NTU1NDk3Mzk.*_ga_V9WQH77KLW*czE3OTEzNzU3NjgkbzcxMCRnMSR0MTc5MTM3NTc3NSRqNTMkbDAkaDA..

[35] The Department is incorrect. "The term 'includes' is typically interpreted as a term of enlargement, and not of limitation. Where 'including' is used to introduce a list of examples, such examples are to be viewed as illustrative, not exhaustive." *Nat'l Shooting Sports Found. v. James*, 144 F.4th 98 (2d Cir. 2025) (citations and internal quotation marks omitted)).

[36] Comment of Ann and Andy McCann (on file and available upon request).

[37] Comment of Jonathan Farrell, Executive Director, COTS (on file and available upon request).

[38] Comment of Brenda Siegel, Executive Director, End Homelessness Vermont (on file and available upon request).

[39] Comment of 271 Vermonters (on file and available upon request).

taxpayer funds were appropriated." It is as true today as it was on March 28, 2025, that to substantially accomplish the Legislature's goals and to avoid the arbitrary and irrational results that the Governor addressed by extending motel stays for children and people with disabilities, the Department should provide extensions to all eligible households with children and people with disabilities at serious risk of harm to their health.

LCAR should object to Part 8, Rule 5.00. Rule 5.01 should be modified to replace the term "may" with "shall" ("The Department shall grant extensions to the 70-day limit…") and the list of persons eligible for extensions should be amended to add "(e) An eligible household with a child."

III. Conclusion

The ACLU of Vermont respectfully asks the Legislative Committee on Administrative Rules to object to the VHRC emergency rules as outlined in this memorandum.

Appendix A. In addition to the rules discussed in detail in the memorandum, the VHRC emergency rules in the chart below do not reflect legislative intent.

Act 143	Rule	How the rule fails to reflect legislative intent
33 V.S.A. § 2203(c); 33 V.S.A. § 2205(a)(4), (b)(4); 33 V.S.A. § 2206(3); 33 V.S.A. § 2207(6); 33 V.S.A. § 2210(a). Placement in a particular level of service for the VHRC is dependent on capacity, staffing, and geographic accessibility, but eligibility for the VHRC program as a whole is not.	Part 1, Rule 4.02. Eligibility for the VHRC is subject to capacity, staffing, and geographic accessibility.	The rule impermissibly limits eligibility for the VHRC itself (rather than a specific level of service within it) on capacity, staffing, and geographic accessibility. Pursuant to the statute, a household may be eligible for the VHRC even if there is no capacity in the Level 4 motel program.
33 V.S.A. § 2210(a); 33 V.S.A. § 2211(a); 33 V.S.A.§ 2203(c). A household qualifies for the Program by meeting criteria provided by the statute (residency, coordinated entry, case management, following program rules) and services are prioritized for households including a member who is 65 or older, has a disability, is a minor child, is pregnant, faces a safety risk, or is subject to an eviction through no fault of their own.	Part 1, Rules 5.00. Adds a needs assessment screening tool (and as detailed in procedures, adds a numerical scoring system for applicants).	The HOU-SING needs assessment is far beyond what was contemplated by the Legislature's authorization of a basic assessment to be used to determine the appropriate level of assistance for an applicant household.
33 V.S.A. § 2215(a); 33 V.S.A. § 2216(6)-(7); 33 V.S.A. § 2210(b)(1). Written notice is required when participation is denied, reduced, suspended or terminated, stating the factual and legal basis, effective date, hearing rights, and plain-language appeal instructions.	Part 1, Rule 9.00. Mirrors the Act.	As implemented, notices are extremely confusing and partial. E.g., applicants receive one notice of eligibility regarding the VHRC, a separate notice regarding eligibility for Level 4 placements, no indication that there is an opportunity to request an extension rather than appeal a denial based on reaching the durational limit, confusing information regarding when a household

		is eligible for Level 4 assistance (listing the commencement of the cold weather season on December 1 rather than the household's 70-day durational limit reset date).
33 V.S.A. § 2212(a)(4); 33 V.S.A. § 2216(9); Act 143, Sec. 6a. Level 4 hotel and motel stays are capped at 70 days per rolling 12-month period from April 1 to November 30; stays from December 1 to March 31 do not count toward the cap.	Part 8, Rules 4.00-4.01. Limits initial motel authorization to seven days for households without a housing plan and requires completion of the plan to obtain authorization for an additional 28 days.	The 7-day authorization window is completely absent from the Act and is likely to disparately impact people with disabilities.
33 V.S.A. § 2210(c). A household may be terminated for refusing suitable placements following documented suitability assessments and reasonable accommodation.	Part 10, Rule 1.02. A household may be terminated for refusing two or more suitable housing placements as defined in the household's housing plan following documented suitability assessments and reasonable accommodations.	The rule does not define "suitable housing placements." Participants have a right to choose to receive services in the community rather than segregated settings, like nursing homes. The rules should include a definition of "suitable housing placements," specifically stating that an institutional setting for people with disabilities who wish to remain in the community is not "suitable."
33 V.S.A. § 2216(10). The Department is directed to engage in rulemaking to describe "a process for reinstatement of services after a household's termination from the Program."	Part 10, Rule 3.02. The Department may reinstate persons terminated from the Program only after 12 months have passed from the date of termination.	There is nothing in Act 143 authorizing a period of ineligibility. Pursuant to the Vermont Administrative Procedure Act, penalties cannot be imposed in rules that are not authorized by other law. 3 V.S.A. § 845.