

Psychiatric Residential Treatment Facility for Youth Licensing Rule

1.0 Authority

This Rule is adopted pursuant to 18 V.S.A. § 7261(e).

2.0 Purpose

This Rule sets forth the standards that apply to the licensing of psychiatric residential treatment facilities for youth (PRTF) in Vermont.

3.0 Definitions

- 3.1 “Accreditation” means the formal recognition by an approved accrediting body, such as the Joint Commission, that indicates conformity with the accrediting body’s required set of standards and criteria for a PRTF.
- 3.2 “CMS” means the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services.
- 3.3 “CMS Conditions of Participation for psychiatric residential treatment facilities for youth” or “CoPs” means 42 C.F.R. § 441.150-441.184 (Subpart D) and 42 C.F.R. § 483.350-483.376 (Subpart G) of the Code of Federal Regulations, as may be updated or amended, and related laws and regulations, interpretive guidelines, appendices, and requirements, except that 42 C.F.R. § 441.151(a)(3)(i) and (ii) (“...or, if the individual was receiving the services immediately before he or she reached age 21, before the earlier of the following—(i) The date the individual no longer requires the services; or (ii) The date the individual reaches 22...”) shall not be included in the meaning of “CMS Conditions of Participation for psychiatric residential treatment facilities for youth” or “CoPs” as used in this Rule.
- 3.4 “Commissioner” means the Commissioner of the Vermont Department of Health.
- 3.5 “Deemed Status” means the status granted to a PRTF by a CMS-approved national accrediting body, such as the Joint Commission or other accrediting organization that has comparable standards and is recognized by the Commissioner of Mental Health, after it has surveyed the PRTF and determined it is in compliance with all CMS Conditions of Participation.
- 3.6 “Deficiency” means a policy, procedure, practice, or action by a PRTF that results in the facility not being in compliance with this Rule or with the CMS Conditions of Participation.
- 3.7 “Department” means the Vermont Department of Health.

3.8 “Psychiatric residential treatment facility for youth” or “PRTF” means a nonhospital, inpatient facility that holds accreditation to provide psychiatric services in a residential setting to youth, as defined herein, with complex mental health conditions under the direction of a physician.

3.9 “Joint Commission” means the independent not-for-profit organization that accredits and certifies that healthcare organizations meet certain quality and performance standards.

3.10 “Mental Health Patient Representative” or “Representative” means a person who advocates for and fosters communication with health care providers on behalf of patients pursuant to a contract with the Department of Mental Health, in accordance with 18 V.S.A. § 7253(1)(J).

3.11 “Resident Complaint” means any expression of dissatisfaction with the care and treatment provided by a PRTF, from a resident, a resident’s parent or legal guardian, or the resident’s Mental Health Patient Representative. In this Rule, the term includes a resident “grievance,” which in the CoPs and CMS State Operations Manual specifically refers to complaints presented to and resolved or attempted to be resolved within a facility’s internal system. It does not include matters that are resolved by staff present.

3.12 “Plan of Correction” means a written plan that a licensee is required to submit to address any identified Deficiency to bring a PRTF into compliance with this Rule.

3.13 “State Survey Agency” means the unit of Vermont state government designated by the Centers for Medicare and Medicaid Services to enforce the federal Conditions of Participation for hospitals and PRTFs in Vermont, which is the Vermont Department of Disabilities, Aging and Independent Living.

3.14 “Validation Survey” means a survey conducted by the State Survey Agency on behalf of CMS to ensure that a PRTF with Deemed Status is in compliance with the CMS conditions of participation.

3.15 “Youth” means a resident who is certified in writing to be in need of the services in the PRTF setting in accordance with 42 C.F.R. § 441.152;

3.15.1 who is at least 12-years-old and up to 18-years-old; and

3.15.2 who is at least 18-years-old and up to 21-years-old, if the resident

3.15.2.1 was receiving services in a PRTF at the time they reach age 18; and

3.15.2.2 continues to require the services provided at the PRTF.

4.0 Application for a Psychiatric Residential Treatment Facility for Youth License

- 4.1 No organization or individual may establish, conduct, or maintain operation of a PRTF in Vermont without being granted a license by the Vermont Department of Health.
- 4.2 Every Vermont PRTF license shall expire on December 31 of each year unless otherwise revoked.
- 4.3 An application for a PRTF license, or renewal of a license, shall be submitted in the form required by the Department and available on its webpage. Renewal applications shall be submitted on or before the date set by the Department.
- 4.4 Applications for an initial license and applications for license renewal shall contain all the information required by the Department. The required information shall include
 - 4.4.1 Identifying information and all facility locations.
 - 4.4.2 Administrative officers and contact information for the person completing the application.
 - 4.4.3 Type and form of organization, documentation of registered status as a nonprofit entity, and CMS designation.
 - 4.4.4 Certification and accreditation status.
 - 4.4.5 Numbers of beds.
 - 4.4.6 Verification of other statutory requirements.
 - 4.4.7 Information regarding the plan for handling of resident complaints and the staff member responsible for that program.
- 4.5 Applications for a PRTF license or renewal shall certify compliance with health, safety, and sanitary standards required by law.
- 4.6 Unless the Department specifies a different time or format for response, a PRTF that receives an inquiry from the Department regarding the licensing application shall furnish all information requested within ten (10) working days of receipt.

Failure to meet submission deadlines may delay action on an application.

5.0 Requirements for Psychiatric Residential Treatment Facility for Youth Licensure in Vermont

5.1 Compliance with CMS Conditions of Participation

- 5.1.1 To be licensed and retain licensure in Vermont, each PRTF shall comply with all applicable CMS Conditions of Participation referenced in Section 3.3 of this Rule unless:
 - 5.1.1.1 Operating under a Plan of Correction as described in Section 8.4 of this Rule; or
 - 5.1.1.2 Operating under a waiver granted under Section 1135 of the Social Security Act during an emergency as defined in 42 U.S.C. § 1320b-5.
- 5.1.2 To demonstrate compliance with CoPs, each Vermont PRTF facility shall make the premises and appropriate staff available for a comprehensive, on-site and unannounced survey by the State Survey Agency:
 - 5.1.2.1 Occurring on average once every five years or at a frequency determined by CMS;
 - 5.1.2.2 Whenever CMS requires a Validation Survey for an accredited PRTF with Deemed Status; or
 - 5.1.2.3 Whenever the Department or its designee determines that a survey is required as referenced in Section 5.2 of this Rule.
- 5.1.3 As part of the annual PRTF licensing process, both for initial licenses and at renewal, each PRTF shall provide to the Department any documents necessary to verify for the Department that the PRTF has met the requirements of the CoPs.

5.2 Demonstrating Compliance with CMS CoPs by Deemed Status

- 5.2.1 As long as CMS recognizes that a PRTF accredited by the Joint Commission and with Deemed Status meets the compliance requirements of the CoPs, each accredited PRTF with Deemed Status shall be considered by the State Survey Agency and the Department to have met the CoPs unless and until their accreditation is revoked or cancelled.
- 5.2.2 If a PRTF relies on an accrediting body other than the Joint Commission to determine that it has met the CoPs, the PRTF shall provide verification that CMS has approved the accrediting body to authorize Deemed Status.

5.2.3 A PRTF with Deemed Status shall make the institution available for a Validation Survey by the State Survey Agency when CMS requires a Validation Survey.

5.3 A PRTF license is not transferable or assignable and shall be issued only for the premises and persons named in the application. A licensed PRTF contemplating a change of ownership, or the elimination or significant reduction of clinical services shall provide at least ninety (90) days advance notice to the Department.

5.4 The PRTF license shall be posted in a conspicuous place on the licensed premises.

5.5 A PRTF shall follow up with residents within 72 hours of discharge. This shall be done by the most effective means possible including via email, text, or phone. A PRTF shall continue to follow up with the resident until either contact is made, or at least 5 attempts every 24 hours for up to 72 hours have been made and documented.

5.6 **Health and Life Safety and Other Regulatory Requirements**

In addition to conforming to all CoPs, each Vermont PRTF seeking licensure shall comply with all applicable current state and municipal laws including, but not limited to, the Department of Public Safety Rules on Vermont Fire and Building Safety Codes and other Vermont laws related to food safety.

5.7 **Emergency Preparedness Planning**

5.7.1 Each Vermont PRTF shall have an Emergency Preparedness Plan as required by CMS regulations at 42 C.F.R. § 441.184 and the associated guidelines.

5.7.2 A PRTF that is affiliated with a Vermont-licensed hospital may satisfy the requirement for an Emergency Preparedness Plan as a participant in the hospital's Emergency Preparedness Plan if the requirements of 42 C.F.R. § 441.184(e) are met.

5.7.3 Each PRTF shall provide a copy of its Emergency Preparedness Plan to the Department for review if requested.

5.8 **Reporting of Events to the Department**

5.8.1 A PRTF shall provide the Department with a copy of any report that is required to be filed with the Vermont's State Medicaid Agency, the Department of Vermont Health Access, pursuant to 42 C.F.R. § 483.374.

- 5.8.2 Reports shall be submitted to the Department within the timelines specified in 42 C.F.R. § 483.374(b) and (c). A PRTF shall, upon a request by the Department or the State Survey Agency, provide the Department or the State Survey Agency with copies of reports that were previously filed with the Department of Mental Health pursuant to Section 5.1 of the Regulation Establishing Standards for Emergency Involuntary Procedures of the Vermont Department of Mental Health
- 5.8.3 Within a week of receipt, the Vermont Department of Mental Health shall provide the Department with a redacted Critical Incident Report, filed pursuant to 18 V.S.A. § 7257(a), that resulted from an Emergency Involuntary Procedure. Additional information regarding the Critical Incident Report shall be provided to the Department upon request in accordance with Section 5.8.1 of this Rule.

6.0 Complaint Process

6.1 Notice to Residents

Each Vermont PRTF shall

- 6.1.1 Distribute to all residents, upon admission on an inpatient basis, a plain language and easily readable print copy of the facility's complaint policy and a copy of the complaint form. For residents who are under 18 years of age or subject to guardianship, the policy and form shall also be provided to the resident's parent or guardian.
- 6.1.2 Post conspicuously the facility's complaint policy in areas frequented by residents and resident representatives and on the facility's website.
- 6.1.3 Provide during each annual licensure application its current procedure for informing residents of the complaint policy.

6.2 Procedures for Responding to Resident Complaints

A PRTF's complaint policy shall include the following minimum elements:

- 6.2.1 A description of the procedure for filing and appealing a complaint to the PRTF, clearly labeled, "To file a complaint" or "What to do if you are not satisfied with our response to your complaint". Other descriptors such as "resident concerns" or "consumer feedback" may be used, but only in addition to "To file a complaint" or "What to do if you are not satisfied with our response to your complaint."

- 6.2.2 A notice that a complainant may directly contact the Department, the Board of Medical Practice, or the licensing authorities for other health care professions as an alternative, or in addition, to the PRTF's complaint and appeal procedures. The notice shall include the address and phone numbers for the Board of Medical Practice and the Office of Professional Regulation.
- 6.2.3 A published time frame for processing and resolving complaints and appeals within the PRTF and notice that further appeals may be made to the Department.
- 6.2.4 A notice that the PRTF has designated a qualified person or persons to act in the role of Mental Health Patient Representative. The notice shall include the title, qualifications, and general duties of the Representative(s) and the phone and e-mail contact information for the current Representative(s);
- 6.2.5 A description of internal procedures for receiving, processing, and resolving complaints from or filed on behalf of residents. Such procedures must ensure that the PRTF complies with the Conditions of Participation requirements for grievances.
- 6.2.6 Each PRTF shall be prepared to demonstrate to the Department that the facility has an adequate system to create and maintain records of complaints presented by residents and their representatives.

6.3 Reporting Complaint Data

At least annually, on a schedule and in a format acceptable to the Commissioner, a PRTF shall submit to the Department a report summarizing, in aggregate, the types of complaints filed with the PRTF by residents or their representatives in the past year. The report shall contain:

- 6.3.1 The number of inpatient days for the reporting period;
- 6.3.2 The total number of complaints received;
- 6.3.3 The total number of complaints in each of the categories the PRTF uses to track complaints; and
- 6.3.4 A brief narrative report describing examples of actions taken to resolve complaints in the past year.

7.0 Emergency Involuntary Procedures

7.1 In accordance with 18 V.S.A. § 7621(e), this Rule incorporates the Regulation Establishing Standards for Emergency Involuntary Procedures of the Vermont

Department of Mental Health (“Department of Mental Health Rule”), as it exists at the time of the adoption of this Rule and as may be amended from time to time.

7.2 In applying the Department of Mental Health Rule to situations involving a PRTF, the following adaptations are necessary:

- 7.2.1 Throughout the Department of Mental Health Rule “hospital” shall be read as “psychiatric residential treatment facility for youth.”
- 7.2.2 Throughout the Department of Mental Health Rule “hospitalized individuals” shall be read as “individuals being treated in a psychiatric residential treatment facility for youth.”
- 7.2.3 Section 1.1(e) of the Department of Mental Health Rule shall be read as: “These rules apply to individuals being treated in a psychiatric residential treatment facility for youth.”
- 7.2.4 The statutory authority for adoption of the rule for psychiatric residential treatment facilities for youth is 18 V.S.A. § 7261(e).
- 7.2.5 At Section 2.2(h) of the Department of Mental Health Rule, “licensed under Chapters 23 or 33 of Title 26, Vermont Statutes Annotated” shall be inserted after “physician.” Section 2.2(j) of the Department of Mental Health Rule shall be read as: “Physician assistant means an individual licensed by the Board of Medical Practice as a physician assistant. A physician assistant may prescribe, dispense, and administer drugs and medical devices so long as the act is within their education, training, and experience and not prohibited by their practice agreement.”
- 7.2.6 At Section 4.1(a) of the Department of Mental Health Rule, the final clause shall be replaced by the following: “who practices pursuant to a practice agreement with a psychiatrist.”

8.0 Enforcement

- 8.1 The Commissioner may use any and all powers granted under Title 18 of the Vermont Statutes Annotated in the course of monitoring, investigating, or otherwise ensuring compliance with the requirements of this Rule.
- 8.2 Notwithstanding a CMS-approved national accrediting body’s determination that a PRTF has met CoPs through surveys or Deemed Status, the Department or its designee may inspect, independently review, or investigate a PRTF at any time, to determine whether a PRTF is in compliance with requirements for PRTF licensure under Vermont law.

8.3 If the Department determines that a PRTF is not in full compliance with any

requirements of this Rule, it shall notify the PRTF of the Deficiency.

- 8.4 When notified of a Deficiency, a PRTF shall within 10 business days, or such shorter period as may be specified in the notice for good cause, develop and submit a Plan of Correction for addressing any identified Deficiency and for achieving compliance with this Rule.
- 8.5 Department Review and Response to Plan of Correction
 - 8.5.1 The Department shall determine whether a Plan of Correction submitted pursuant to Section 7.4 of this Rule is sufficient to effectively address each identified Deficiency and bring the PRTF in compliance with the requirements of this Rule.
 - 8.5.2 Within thirty (30) days after receipt of a Plan of Correction, the Department shall notify the PRTF related to each identified Deficiency that the Department:
 - 8.5.2.1 Accepts the Plan of Correction; or
 - 8.5.2.2 Requests a revision to the Plan of Correction specifying the reasons for the request.
 - 8.5.3 A PRTF required to submit a revised Plan of Correction pursuant to Section 8.5.2.2 of this Rule shall develop and submit the revision within thirty (30) days during which time the Department shall make available a representative to review with the PRTF any proposed revisions.
- 8.6 If, after reviewing a revised Plan of Correction, the Department determines that a PRTF is not in full compliance with this Rule or cannot comply with this Rule or the PRTF's Plan of Correction, the Department may find that the PRTF is in violation or substantial violation of this Rule.
- 8.7 If the Department finds that a PRTF is in violation of this Rule it may, in accordance with Sections 8.9 and 9.0 of this Rule:
 - 8.7.1 Modify a current license to make it subject to fulfillment of specified conditions, including requirements for the submission of written plans, progress reports and any other information required by the Department that demonstrates to the satisfaction of the Department and Commissioner that the PRTF is actively and effectively taking all necessary steps to comply with its license conditions;
 - 8.7.2 Issue or renew a license subject to fulfillment of specified conditions, including requirements for the submission of written plans, progress

reports and any other information required by the Department that demonstrates to the satisfaction of the Department and Commissioner that the PRTF is actively and effectively taking all necessary steps to comply with its license conditions; or

8.7.3 Issue a temporary license to the PRTF for a total period not to exceed thirty-six consecutive months, specifying requirements for the submission of written plans, progress reports and any other information required by the Department that demonstrates to the satisfaction of the Department and Commissioner that the PRTF is actively and effectively taking all necessary steps to come into full compliance within the period of time permitted by the temporary license.

8.8 If the Department finds that a PRTF is in substantial violation of this Rule it may, in accordance with Sections 8.9 and 9.0 of this Rule, do one or more of the following:

8.8.1 Not issue or renew the PRTF's license;

8.8.2 Revoke the PRTF's license; or

8.8.3 Impose, or recommend that the Department impose, any other penalties permitted by law.

8.9 In the event that the Department intends to take any of the actions set forth in Sections 8.7 and 8.8 of this Rule, the following due process procedures consistent with 18 V.S.A. § 7261(f) and 3 V.S.A. Ch. 25 relating to contested cases, shall be followed:

8.9.1 Notice shall be served on the PRTF by registered mail or by personal service, setting forth detailed reasons for the proposed action, complying with 3 V.S.A. § 809(a), and fixing a date not less than sixty (60) days from the date of such mailing or service at which the PRTF shall be given opportunity for a hearing.

8.9.2 The PRTF may, within thirty (30) days after issuance of the decision of the Commissioner, appeal to the Vermont Superior Court in the county where the PRTF is located. The court may affirm, modify, or reverse the decision of the Commissioner and either the PRTF or the Department may appeal to the Vermont Supreme Court for such further review as is provided by law.

9.0 Informing Residents of Investigation Completion

Upon completion of an investigation and determination as to whether an action is to be pursued under Sections 8.7 or 8.8 of this Rule, the Department will provide the Complainant or his or her representative notice in writing. The notice shall state that the investigation is complete and whether a public proceeding regarding the license of the

subject facility will result. Notice will be sent promptly and in no case more than 14 days after the determination is made and shall include the time and place of any public proceeding.