

# The Vermont Statutes Online

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## Title 18: Health

### Chapter 171: General Provisions

#### § 7101. Definitions

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

- (1) “Board” means the Board of Mental Health.
- (2) “Commissioner” means the Commissioner of Mental Health.
- (3) “Custody” means safekeeping, protection, charge, or care.
- (4) “Designated hospital” means a hospital or other facility designated by the Commissioner as adequate to provide appropriate care for the mentally ill patient.
- (5) “Elopement” means the leaving of a designated hospital or designated program or training school without lawful authority.
- (6) “Head of a hospital” means the administrator or persons in charge at any time.
- (7) “Hospital” means a public or private hospital or facility or part thereof, equipped and otherwise qualified to provide inpatient care and treatment for persons with mental conditions or psychiatric disabilities.
- (8) “Individual” means a resident of or a person in Vermont.
- (9) “Interested party” means a guardian, spouse, parent, adult child, close adult relative, responsible adult friend, or person who has the individual in his or her charge or care. It also means a mental health professional, a law enforcement officer, a licensed physician, or a head of a hospital.
- (10) “Law enforcement officer” means a sheriff, deputy sheriff, constable, municipal police officer, or State Police.
- (11) “Licensed physician” means a physician legally qualified and licensed to practice as a physician in Vermont.
- (12) [Repealed.]

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

(14) “Mental illness” means a substantial disorder of thought, mood, perception, orientation, or memory, any of which grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life, but shall not include intellectual disability.

(15) “Patient” means a resident of or person in Vermont qualified under this title for hospitalization or treatment as a person with a mental illness or intellectual disability.

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

(A) a person in need of treatment; or

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

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

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

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

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

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

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

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

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

(18) “Resident of Vermont” means:

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

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

(19) "Retreat" means the Brattleboro Retreat.

(20) "Secretary" means the Secretary of Human Services.

(21), (22) [Repealed.]

(23) "Vermont" means the State of Vermont.

(24) "Voluntary patient" means an individual admitted to a hospital voluntarily or an individual whose status has been changed from involuntary to voluntary.

(25) "Children and adolescents with a severe emotional disturbance" means those persons defined as such under 33 V.S.A. § 4301(3).

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

(27) "Participating hospital" means a hospital under contract with the Department of Mental Health to participate in the no refusal system.

(28) "Successor in interest" means the mental health hospital owned and operated by the State that provides acute inpatient care and replaces the Vermont State Hospital.

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

(30) "Peer services" means support services provided by trained peers or peer-managed organizations focused on helping individuals with mental health and other co-occurring conditions to support recovery. (Added 1967, No. 305 (Adj. Sess.), § 1, eff. Oct. 1, 1968; amended 1973, No. 107, § 3; 1977, No. 245 (Adj. Sess.), § 2; 1977, No. 248 (Adj. Sess.), § 7; 1977, No. 252 (Adj. Sess.), § 2; 1977, No. 257 (Adj. Sess.), §§ 1, 4; 1977, No. 264 (Adj. Sess.), § 6; 1989, No. 187 (Adj. Sess.), § 5; 1995, No. 174 (Adj. Sess.), § 3; 2005, No. 174 (Adj. Sess.), §§ 35, 140; 2007, No. 15, § 9; 2011, No. 79 (Adj. Sess.), § 17, eff. April 4, 2012; 2013, No. 96 (Adj. Sess.), § 100; 2013, No. 161 (Adj. Sess.), § 72; 2013, No. 192 (Adj. Sess.), § 1.)

### **§ 7102. Out-of-state patients**

Nothing in this part of this title shall be deemed to alter or impair the application or availability to any patient, while hospitalized in a state outside Vermont pursuant to contractual arrangements under subdivision 7401(6) of this title, of any rights, remedies, or

protective safeguards provided by the law of that state or by the Interstate Compact on Mental Health where applicable. (Added 1967, No. 305 (Adj. Sess.), § 1, eff. Oct. 1, 1968.)

### **§ 7103. Disclosure of information**

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

(1) as the individual identified, the individual's agent under an advance directive executed in accordance with chapter 231 of this title, or the individual's legal guardian, if any, or, if the individual is an unemancipated minor, the individual's parent or legal guardian shall consent in writing;

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

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

(4) as the disclosure is made to comply with the reporting requirements of section 7617a of this title or 13 V.S.A. § 4824.

(b) Nothing in this section shall preclude disclosure, upon proper inquiry, of information concerning medical condition to the individual's family, clergy, physician, attorney, the individual's agent under an advance directive executed in accordance with chapter 231 of this title, a person to whom disclosure is authorized by a validly executed durable power of attorney for health care, or to an interested party.

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

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

(e) Mandatory disclosure to home providers.

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

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

(3) A home care provider must furnish to any person providing respite care, the individual's relevant information obtained from the agency designated by the Department of Disabilities, Aging, and Independent Living or of Health to provide developmental disability and mental health services, as provided in this subsection. Where the home care provider has agreed to placement without disclosure, the home care provider shall inform the respite provider of that fact.

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

(5) As used in this subsection:

(A) "Home care provider" means a person or entity paid by an agency designated by the Department of Disabilities, Aging, and Independent Living or of Health to provide developmental disability and mental health services, to provide care in his or her home.

(B) "Relevant information" means information needed to protect the individual and others from harm, including any relevant history of violent behavior or conduct causing danger of harm to others, as defined in subdivision 7101(17)(A) of this title; any medications presently prescribed to the individual; and any known precursors of dangerous behavior that may cause future harm.

(C) "Respite provider" means a person, paid by a home care provider, to provide care by the day or overnight in the person's home.

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

(7) Where the individual has consented to disclosure, an agency designated by the Department of Disabilities, Aging, and Independent Living or of Health to provide developmental disability and mental health services shall provide updated information regarding the individual to the home care provider. (Added 1967, No. 305 (Adj. Sess.), § 1, eff. Oct. 1, 1968; amended 1981, No. 221 (Adj. Sess.), § 3; 2001, No. 103 (Adj. Sess.), § 1, eff. May 15, 2002; 2005, No. 174 (Adj. Sess.), § 36; 2015, No. 14, § 5, eff. Oct. 1, 2015; 2023, No. 6, § 192, eff. July 1, 2023.)

#### **§ 7104. Wrongful hospitalization or denial of rights; fraud; elopement**

A person shall be fined not more than \$500.00 or imprisoned not more than one year, or both, if he or she willfully causes, or conspires with or assists another to cause:

(1) the hospitalization of an individual knowing that the individual is not mentally ill or in need of hospitalization or treatment as an individual with a mental illness or intellectual disability; or

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

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

(4) the elopement of any patient from a hospital or who knowingly harbors any patient who has eloped, or who aids in abducting a patient who has been conditionally discharged from the person or persons in whose care and service that patient has been legally placed. (Added 1967, No. 305 (Adj. Sess.), § 1, eff. Oct. 1, 1968; amended 1977, No. 257 (Adj. Sess.), § 4; 2013, No. 96 (Adj. Sess.), § 100; 2019, No. 131 (Adj. Sess.), § 123.)

### **§ 7105. Arrest of eloped persons**

Any sheriff, deputy sheriff, constable, or officer of state or local police, and any officer or employee of any designated hospital or designated program may arrest any person who has eloped from a designated hospital or designated program and return such person. (Added 1967, No. 305 (Adj. Sess.), § 1, eff. Oct. 1, 1968; amended 1987, No. 248 (Adj. Sess.), § 8; 2017, No. 113 (Adj. Sess.), § 97.)

### **§ 7106. Notice of hospitalization and discharge**

Whenever a patient has been admitted to a hospital other than upon the patient's own application, the head of the hospital shall immediately notify the patient's legal guardian, spouse, parent, or parents, or nearest known relative or interested party, if known. If the involuntary hospitalization or admission was without court order, notice shall also be given to the Superior Court judge for the Family Division of the Superior Court in the unit where the hospital is located. If the hospitalization or admission was by order of any court, the head of the hospital admitting or discharging an individual shall immediately make a report thereof to the Commissioner and to the court that entered the order for hospitalization or admission. (Added 1967, No. 305 (Adj. Sess.), § 1, eff. Oct. 1, 1968; amended 1977, No. 252 (Adj. Sess.), § 3; 2009, No. 154 (Adj. Sess.), § 150; 2023, No. 6, § 193, eff. July 1, 2023.)

### **§ 7107. Extramural work**

Any hospital in the State dealing with mental health may do, or procure to be done, extramural work in the way of prevention, observation, care, and consultation with respect to mental health. (Added 1967, No. 305 (Adj. Sess.), § 1, eff. Oct. 1, 1968; amended 2017, No. 113 (Adj. Sess.), § 98.)

### **§ 7108. Repealed. 2015, No. 4, § 90, eff. March 12, 2015.**

### **§ 7109. Sale of articles; revolving fund**

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

(b) The consent of the patient or the legal representative of the patient or student shall, in consideration of the undertaking of the superintendent, contain the further agreement that one-half the earnings of the patient or student shall be credited to the personal account of the patient or student so employed at interest for benefit of the patient or student and the balance shall be credited to the fund. The superintendent shall hold and expend the fund for the purchase of equipment and materials for the handicraft or group therapy departments and for the educational and recreational welfare of the patient or student group. He or she shall submit an annual report of the fund to the Commissioner. Balances remaining in it at the end of a fiscal year shall be carried forward and be available for the succeeding fiscal year.

(c) For purposes of this section the legal representative of the patient or student shall be the duly appointed guardian, the spouse, the parents, or the next of kin legally responsible for the patient or student. In their absence, the Commissioner shall be the legal representative. (Added 1967, No. 305 (Adj. Sess.), § 1, eff. Oct. 1, 1968; amended 1977, No. 146 (Adj. Sess.), § 2.)

### **§ 7110. Certification of mental illness**

A certification of mental illness by a licensed physician required by section 7504 of this title shall be made by a board-eligible psychiatrist, a board-certified psychiatrist, or a resident in psychiatry, under penalty of perjury. In areas of the State where board-eligible psychiatrists, board-certified psychiatrists, or residents in psychiatry are not available to complete admission certifications to the Vermont State Hospital or its successor in interest, the Commissioner may designate other licensed physicians as appropriate to complete certification for purposes of section 7504 of this title. (Added 1967, No. 305 (Adj. Sess.), § 1, eff. Oct. 1, 1968; amended 1977, No. 145 (Adj. Sess.), § 1; 1995, No. 154 (Adj. Sess.), § 1; 2011, No. 79 (Adj. Sess.), § 19, eff. April 4, 2012.)

### **§ 7111. Right to legal counsel**

In any proceeding before, or notice to, a court of this State involving a patient or student, or a proposed patient or student, that person shall be afforded counsel, and if the patient or student or proposed patient or student is unable to pay for counsel, compensation shall be paid by the State to counsel assigned by the court; however, this section shall not apply to a proceeding under section 7505 of this title. (Added 1967, No. 305 (Adj. Sess.), § 1, eff. Oct. 1, 1968; amended 1977, No. 252 (Adj. Sess.), § 4.)

### **§ 7112. Appeals**

A patient may appeal any decision of the Board. The appeal shall be to the Family Division of the Superior Court of the county where the hospital is located. The appeal shall be taken in such manner as the Supreme Court may by rule provide, except that there shall not be any stay of execution of the decision appealed from. (Added 1967, No. 305 (Adj. Sess.), § 1, eff. Oct. 1, 1968; amended 1971, No. 185 (Adj. Sess.), § 187, eff. March 29, 1972; 1973, No. 244 (Adj. Sess.), § 1; 1977, No. 252 (Adj. Sess.), § 5; 2009, No. 154 (Adj. Sess.), § 150a; 2023, No. 6, § 194, eff. July 1, 2023.)

**§ 7113. Independent examination; payment**

Whenever a court orders an independent examination by a mental health professional or a qualified developmental disabilities professional pursuant to this title or 13 V.S.A. § 4822, the cost of the examination shall be paid by the Department of Disabilities, Aging, and Independent Living or of Mental Health. The mental health professional or qualified developmental disabilities professional may be selected by the court but the Commissioner of Disabilities, Aging, and Independent Living or of Mental Health may adopt a reasonable fee schedule for examination, reports, and testimony. (Added 1991, No. 231 (Adj. Sess.), § 8; amended 1995, No. 174 (Adj. Sess.), § 3; 2005, No. 174 (Adj. Sess.), § 37; 2007, No. 15, § 10; 2013, No. 96 (Adj. Sess.), § 100; 2023, No. 6, § 195, eff. July 1, 2023.)

**§ 7114. Safety policies for employees delivering direct social or mental health services**

(a) The Secretary of Human Services, in consultation with each department of the Agency, shall establish and maintain a workplace violence prevention and crisis response policy for the benefit of employees delivering direct social or mental health services pursuant to 33 V.S.A. § 8201.

(b) The Secretary shall ensure that the Agency's contracts with providers described in 33 V.S.A. § 8201(a)(2) require the providers to establish and maintain a written workplace violence prevention and crisis response policy for the benefit of employees delivering direct social or mental health services pursuant to 33 V.S.A. § 8201. (Added 2015, No. 109 (Adj. Sess.), § 2, eff. Jan. 1, 2017.)