ADMINISTRATIVE RULES ON

AGENCY DESIGNATION

DEPARTMENT OF DEVELOPMENTAL AND MENTAL HEALTH SERVICES

EFFECTIVE: JUNE 1, 2003

ADMINISTRATIVE RULES ON AGENCY DESIGNATION

1. Definitions: the following definitions apply to the following rules:

Commissioner: Commissioner of the Department of Developmental and Mental Health Services

Department, DDMHS: Vermont Department of Developmental and Mental Health Services

Agency: a legal entity responsible for ensuring service provision, as described in these administrative rules

Board: Board of Directors of the agency

State Committee: State Program Standing Committee

Certification: the process by which the Division of Developmental Services determines whether a provider meets minimum standards to provide publicly funded supports or services to people with developmental disabilities and/or their families.

Disability: with respect to an individual, (1) a physical or mental impairment, including alcoholism and substance abuse as defined by the Americans with Disabilities Act, that substantially limits one or more of the major life activities of the individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment.

Consumer: an individual who is or was eligible to receive services from an agency because of his or her disability. A "disclosed" consumer is someone who openly discloses his/her disability.

Family member: an individual who is related to a person with a disability by blood, marriage, civil union, or adoption, or considers himself or herself to be family based upon bonds of affection, and who currently shares a household with the individual with a disability or has, in the past, shared a household with that individual. For the purposes of this definition the phase, "bonds of affection" means enduring ties that do not depend on the existence of an economic relationship.

Terms deemed inclusive of guardian: unless otherwise specified, any reference to an applicant, service recipient, consumer, person or individual is deemed to refer to the person's guardian, if the person has a guardian and if the action or notification lies within the authority of the guardian.

Related party: all affiliates of an agency, including the affiliate's management and their immediate family members/significant others; the affiliate's principal owner(s) and families/significant others; investments accounted for by the equity method; beneficial employee trusts managed by management of the agency and any party that may, or does, conduct business with the agency and has ownership, control, or significant influence over the management or operating policies of another party to the extent that an arm's length transaction may not be achieved.

Related party transaction: a transaction in which one party to the transaction has the ability to impose contract terms that would not have occurred if one of the parties was not a related party.

Local System of Care Plan: this term is synonymous with the term "Local Community Services Plan," which is contained in Title 18, Chapter 207, Section 8908.

Shall: refers to a mandatory requirement; equivalent with the terms "will" or "must."

May: refers to a strongly desirable and/or optional requirement; equivalent to the term "should."

Day: means calendar day, not working day, unless otherwise specified.

2. Purpose: For each population served by the department, the Commissioner shall designate one agency in each geographic area of the state to assure that people in local communities receive services and supports, consistent with available funding, the state System of Care Plans, the local System of Care Plans, outcome requirements, regulations promulgated by DDMHS, the goals of Vermont for its citizens, the goals of the citizens themselves, and other policies, plans, regulations, and laws.

2.1. Provisions:

2.1.1. Agencies are designated to assure services within geographic areas identified by the Commissioner.

2.1.1.1. The geographic area for each designated agency shall be defined by the Commissioner.

2.1.1.2. Any change in the geographic area of a designated agency may be appealed through the process detailed in Section 9.

2.1.2. Separate designation shall be required for each of the three populations served by DDMHS:

2.1.2.1. Individuals with developmental disabilities

2.1.2.2. Adults with mental illness, or with significant behavioral health needs

2.1.2.3. Children and adolescents with, or at risk of, severe emotional disturbance, or with significant behavioral health needs, and their families

2.1.3. An agency may have multiple designations.

2.1.4. Agencies are designated for a period not to exceed four (4) years, unless extended by the Commissioner pursuant to these regulations.

2.1.4.1. Designations will remain in effect for all existing Designated Agencies until such time that the re-designation process has been completed for a geographic area, with the exception of circumstances that may result in initiation of the de-designation process (see 8.1. - 8.1.3).

2.1.5. In the event that a designated agency restructures, joins, is subsumed by or otherwise becomes part of a different organization, the Commissioner may transfer the designation to the new agency, providing that the new agency meets all of the requirements of these rules and regulations.

2.1.5.1. Designated agencies shall consult DDMHS when a merger or affiliation with another agency or organization is under consideration by the designated agency Board of Directors.

2.1.6. Designated Agencies receive funding from DDMHS to establish, provide, coordinate and administer services and supports for people for whom it is designated to assure services.

2.1.6.1. Agencies may provide services directly and/or may enter into agreements with individuals or organizations for the provision of services.

2.1.6.2. Agencies designated in the area of Developmental Disabilities may only provide services directly if they have been certified by DDS to deliver these services, as required by the 18.V.S.A., Chapter 204A.

3. **State Program Standing Committees:** There shall be a State Program Standing Committee (State Committee) for each DDMHS population served.

3.1. Each State Committee shall be comprised of between 9 and 15 members, a majority of whom will be disclosed consumers and family members of the disability group that they represent.

3.1.1. All members of the State Program Standing Committees shall be appointed by the Governor for staggered terms of three years, and shall serve until a successor is appointed.

3.2. An already existing statewide board or committee may serve as the State Program Standing Committee if it meets the membership requirements as stated in 3.1. and performs the functions as stated in 3.3.

3.2.1. The Developmental Disabilities Advisory Board created by 18 V.S.A., Chapter 204A, section 8733 shall serve as the State Program Standing Committee for this population.

3.3. The State Committee shall advise the department on the performance of the system with respect to the points below, based on a uniform evaluative format developed by DDMHS. Responsibilities of the State Committee shall include:

3.3.1. *Hiring of Key Management*: The Commissioner shall seek advice from the Committee in the appointment of a new Division and/or Unit director. The Division Director shall no less than annually seek feedback from the committee regarding program management.

3.3.2. *Evaluation of Quality*: The Committee shall review information and advise the Department on the quality and responsiveness of services offered statewide.

3.3.3. *State System of Care Plan:* The Committee shall participate in the development of the State System of Care Plan and its updates. In doing so, it will advise the Department in regard to establishing general priorities for resource allocation consistent with the State System of Care Plan. Committee members will have a working knowledge of:

3.3.3.1. Regulatory requirements or mandates that significantly influence resource allocation decisions

3.3.3.2. Other community and departmental pressures on the resources

3.3.3.3. Outcomes related to system of care plan priorities and general resource allocations

3.3.3.4. Any new initiatives, demonstration projects.

3.3.4. *Department Policy:* The Committee shall review and recommend policy that pertains to or significantly influences services for the population they represent.

3.3.5. *Complaints, Grievances & Appeals*: The Committee shall review aggregate information on the frequency, nature and resolution of complaints about services in order to make recommendations on how the statewide network of services or Departmental operations could be improved.

3.4. The State Program Standing Committee shall be involved in the agency designation and re-designation process, as defined in section 6 of these rules.

4. Requirements for Designation: In order to be designated, an agency must demonstrate, or if applying for initial designation, must show the capacity to demonstrate, at least the following qualifications:

4.1. *Corporate Status*: Agencies shall be incorporated to do business in the State of Vermont as a nonprofit organization, and shall have received or applied for federal recognition as a tax-exempt charitable organization as defined in Section 501(c)(3) of the Internal Revenue Code of the United States.

4.2. *Governance*: An agency shall have the following governance structures:

4.2.1. Agencies must be governed by a board made up of citizens who are representative of the demographic makeup of the area served by the agency.

4.2.1.1. A majority of the members of the board shall be comprised of both individuals who are or were eligible to receive services from an agency because of their disability, and family members of an individual who is or was eligible to receive services because of his or her disability.

4.2.1.2. The board president shall survey board members on an annual basis and shall certify to the Commissioner that the composition of the board is comprised of a majority as required by this section. This composition of the board shall be confirmed by the organization's independent audit. Annually, the board shall determine whether or not this disclosure shall be made available to the public on request.

4.2.2. The board shall have an executive director who shall be responsible to the board for all agency activities and for the application and implementation of agency established policies.

4.2.3. The board shall adopt bylaws that meet DDMHS guidelines for bylaws and include, but not be limited to:

4.2.3.1. Clearly written responsibilities and authorities of the Executive Director.

4.2.3.2. The powers and duties of the Board, its standing and special committees, and the responsibilities of individuals serving as board members, including attendance requirements.

4.2.3.3. The Department requirement that Board meetings be open to the public, except when the Board determines the need to convene in Executive Session.

4.2.3.4. A statement of its policies and procedures for disposal of assets and debts and obligations in the event of dissolution of the agency, including the return to DDMHS of any assets and property directly obtained with DDMHS funds, as allowed by law. When a designated agency merges with another organization, the agency shall obtain written authorization from DDMHS approving the transfer or requiring return of the assets and property purchased directly with DDMHS funds.

4.2.4. The Board of Directors shall, at a minimum:

4.2.4.1. Be responsible to the Department for the application and implementation of agency established policies related to DDMHS funding.

4.2.4.2. Determine and promote the mission of the agency

4.2.4.3. Assess community needs and resources

4.2.4.4. Assure agency coordination with other service systems and agencies within the geographic area

4.2.4.5. Develop and implement the Local System of Care Plan for each DDMHS population served by the agency (see Section 4.16)

4.2.4.6. Assure the service capacity in the geographical area to meet the needs of eligible service recipients, within the guidelines established by, and the resources available from, DDMHS

4.2.4.7. Assure that policies and services are consistent with the mission and outcomes of the State of Vermont, the Agency of Human Services, DDMHS, and the needs of consumers and families receiving services

4.2.4.8. Set agency policy

4.2.4.9. Review and approve the agency budget and monitor agency financial status and staff compensation rates

4.2.4.10. Oversee utilization management and service quality, including the review of consumer satisfaction information, and information on consumer grievances and appeals.

4.2.4.11. Assure that the agency maintains a technological infrastructure to conduct business effectively with external entities, including DDMHS and other state and local service agencies and systems.

4.2.4.12. Hire, evaluate the performance of, and, if appropriate, dismiss the executive director.

4.2.4.13. Maintain confidentiality regarding the information it receives during its deliberations on agency staff and consumers.

4.2.5. There shall be a Local Program Standing Committee of the board for each DDMHS population served.

4.2.5.1. Each Local Program Standing Committee shall be comprised, at a minimum, of five members

4.2.5.2. A majority of the membership of the Local Program Standing Committee shall be disclosed consumers and family members.

4.2.5.2.1 In Developmental Services, 25% of the Local Standing Committee must be consumers.

4.2.5.3. At least one member of each Local Program Standing Committee shall serve as a voting member of the Agency Board of Directors.

4.2.5.4. The Local Program Standing Committee may be comprised totally of agency board members if criterion 4.2.5.2. is met.

4.2.5.5. The Agency Board of Directors shall determine its policy for reimbursing committee members for expenses that, if not reimbursed, would prohibit the member from attending committee meetings.

4.2.6. The Local Program Standing Committee shall advise the agency on performance with respect to the points below. Responsibilities of the Program Standing Committee shall include:

4.2.6.1. *Hiring of Key Management*: The Executive Director shall seek advice from the Committee in the appointment of a new program director or the person responsible for program services, and the program services director and/or the Executive Director shall seek feedback from the Committee no less than annually regarding program management or operations.

4.2.6.2. *Evaluation of Quality*: The Committee shall review information and comment on the quality and responsiveness of services offered in the geographic area.

4.2.6.3. *Local System of Care Plan*: The Committee shall be involved in the development of a local system of care plan for the DDMHS population that it represents, and its updates. In doing so, it will advise the Agency in establishing general priorities for resource allocation consistent with the Local System of Care Plan. Committee members will have working knowledge of:

4.2.6.3.1. Regulatory requirements or mandates that significantly influence resource allocation decisions.

4.2.6.3.2. Other community and agency pressures on resources.

4.2.6.3.3. Outcomes related to system of care plan priorities and general resource allocations.

4.2.6.3.4. New initiatives, demonstration projects.

4.2.6.4. *Agency Policy:* The Committee shall review and recommend policy that pertains to or significantly influences services for the population they represent, and shall set policy when delegated this authority by the Board of Directors.

4.2.6.5. *Complaints, Grievance and Appeals Resolution*: The Committee shall review and comment on information concerning the frequency, type and resolution of complaints about services for the population they represent, in order to make recommendations on how Agency operations could be improved.

4.3. *Agency Organization and Administration:* The agency shall have administrative structures which encourage open communication among all stakeholders (internal and external) and which support the development of mechanisms to identify and respond to organizational needs and concerns. This includes, but is not limited to, processes that support:

4.3.1. Consistent values, mission, vision and goals at all levels of agency operations.

4.3.2. Communication and collaboration among managers, staff and administration related to programmatic planning for both short-term and long-term effectiveness. This includes the sharing of organizational outcomes and performance improvement plans.

4.3.3. Timely and shared decision-making by program managers, supervisors and/or administration.

4.3.4. Positive staff morale and the regular review of staff satisfaction and feedback.

4.3.5. Communication and collaboration with consumers, families, other providers and community stakeholders

4.3.6. Positive community presence and support of key stakeholders.

4.3.7. The agency shall have an organizational chart showing all reporting and supervisory relationships by position titles.

4.4. *Consumer/Family Involvement and Input*: The agency must demonstrate recognition of the importance of consumer and family involvement and input in agency and program design.

4.4.1. The agency must obtain and monitor consumer and family satisfaction, keep written records of all of its monitoring efforts, and document use of this information through quality improvement activities.

4.4.2. The agency must document consumer/family inclusion in program design.

4.4.3. The agency must document inclusion of consumers/family members in reviews of, trends in types of services delivered, requests for services, monitoring of the quality of services, and evaluations of agency and program effectiveness.

4.4.4. The agency shall involve consumers and families in the design, delivery and evaluation of training

4.5. *Data and Information Systems*: The agency must have a technological infrastructure that enables cost effective information collection, analysis, and telecommunication functions required to:

4.5.1. Submit all required information in the format and timeline specified by DDMHS.
4.5.2. Monitor costs, outcomes, service provision, service accessibility, as specified by DDMHS.
4.5.3. Support high quality and responsive service provision with the capacity to monitor the services delivered by contracted service providers, and/or persons who self-manage as required by DDMHS.
4.5.4. Support appropriate treatment payment, and healthcare operations information on quality assurance, quality improvement, and outcome activities performed by the agency.
4.5.5. Conduct business internally, and with external entities, including DDMHS and other state and local service agencies and systems
4.5.6. Protect confidentiality of consumers when data are transferred to the department and/or other entities in adherence with the Agency of Human Services confidentiality guidelines.

4.6. *Fiscal Management*: The agency must have fiscal management practices that demonstrate the following:

4.6.1. Fiscal solvency, as demonstrated by the ability to meet payroll and pay bills in a timely fashion
4.6.2. Medicaid certification
4.6.3. A published fee schedule

4.6.3.1. The agency shall make every reasonable effort to collect all fees from individuals and third-party payors.

4.6.4. Reliable monitoring of billing and expenditures versus revenues by consumer, by staff, by service, by program, and by service provider, in accordance with generally accepted accounting principles (GAAP).
4.6.5. Accounting practices in accordance with DDMHS standards and procedures including, at a minimum, the composite balance sheet, and the composite statement and program statements of revenue and expense.
4.6.6. An annual financial and compliance audit performed by an independent public accountant in accordance with the department's Audit Guide and all applicable State and Federal laws, regulations, policies and procedures
4.6.7. Adequate fire, personal, professional and general liability, board/officer insurance coverage within guidelines set by DDMHS
4.6.8. Efficient administrative practices, including, but not limited to, fiscal policy and procedure manuals

4.6.9. Agencies may receive funds from sources other than the DDMHS to carry out its duties for the population(s) whom they are designated to serve by DDMHS. Funds received from such sources must be identified to DDMHS.

4.6.10. Agencies must identify and report all related-party transactions within their organization to the Commissioner, including the nature of the relationship and transaction, and the dollar amounts involved.

4.7. *Comprehensive Service System*: The agency must assure that a comprehensive, integrated, accessible and responsive array of services, staff, and supports is available within the designated geographical region to meet the service needs of eligible persons, within the guidelines of service and budget priorities and allocations established by DDMHS by:

4.7.1. Providing, and/or contracting for the provision of, the array of required services, as detailed in the state System of Care Plans for Developmental Services, for Child, Adolescent and Family Services, and for Adult Mental Health Services

4.7.2. Providing, and/or contracting for the provision of, crisis response and services for the designated populations within the designated geographical region as required by DDMHS policies and procedures.

4.7.3. Providing, and/or contracting for the provision of, secure and safe services for people who have been committed to the custody of the Commissioner

4.7.4. Providing, and/or contracting for the provision of, the array of required services needed to assist the Commissioner in any legal proceedings for commitment, including but not limited to transmission of client records and witness statements, in a timely manner.

4.7.5. Providing, and/or contracting for the provision of, timely return to the community from inpatient or institutional placements

4.7.6. Providing, and/or contracting for the provision of, timely action on applications for service; information and referral to community and government resources; education about choices for service and support options, including self-directed services where applicable;

4.7.7. Effective collaborating with related community/human service agencies providing support services in the region, including but not limited to:

4.7.7.1. Working agreements with all service providers and/or persons who self-manage with whom the Designated Agency contracts for services using DDMHS funds, detailing the roles and responsibilities between the two entities regarding consumer services and administrative functions (including information sharing and reporting, fiscal monitoring of consumer services, and service plan implementation)

4.7.7.2. Working agreements regarding the provision of services will clearly outline the responsibilities of contractors and/or persons who self-managed to provide information to the DA and manage services in accordance with DDMHS guidelines.

4.8. *Quality Improvement and Outcomes*: The agency must actively engage in quality improvement and have a demonstrated ability to use outcomes from all levels of agency operations (consumer care, program effectiveness and overall agency administration) to inform decision making and improve service delivery.

4.8.1. A quality improvement (QI) and assurance system, as demonstrated, at a minimum, by:

4.8.1.1. A written description of the QI program that clearly defines the QI structure and procedures and assigns responsibility to appropriate individuals for maintaining service quality.

4.8.1.2. An annual update of the QI plan that reflects the use of agency data and outcomes and includes changes in the objectives, timelines, scope and planned projects or activities for the year, monitors the previous year's issues, and evaluates the QI program.

4.8.2. Response in a timely and effective manner to recommendations made in DDMHS program reviews and/or other monitoring reports.

4.8.3. For mental health programs, a written description of the Utilization Review and Management (UR/UM) program for each applicable program that clearly defines the structure and procedures and assigns responsibility for UR/UM activities to agency staff

4.8.3.1. Utilization review criteria, which are based on DDMHS practice guidelines and/or reasonable scientific evidence, are clearly documented, are reviewed at specific intervals, and are available to practitioners and consumers and family members upon request.

4.9. *Consumer Support, Treatment and Records:* The agency must document consumer/family caregiver participation in support and treatment planning and assure when required that a written consumer-directed service plan for each person served is created.

4.9.1. The consumer service plan must be in a format accessible to the consumer.

4.9.2. The signature of the consumer, or guardian if applicable, must be included to document their knowledge of the treatment and/or support services.

4.9.3. Plans should be family-directed for children and adolescents.

4.9.4. Consumer support and/or treatment planning shall include written policies that allow for a consumer’s request for a change in therapist, case manager, or support staff.

4.9.5. Consumer support and/or treatment planning must ensure that consumers have the opportunity to include other persons, service agencies/systems in their network of shared information, if desired

4.9.6. Consumer support and/or treatment planning shall be responsive to consumers’ preferences for services and supports

4.9.7. Consumer support and/or treatment planning shall comply with practice guidelines and records standards of DDMHS

4.9.8. Consumer support and/or treatment planning shall include a periodic review of a person's eligibility, need for services and/or service plan

4.9.9. Consumer support and/or treatment planning will provide for or arrange for the provision of services that safeguard the health and safety of the consumer.

4.9.10. Consumer support and/or treatment planning shall include the coordination of service delivery with other service systems and agencies within the region as needed for each consumer

4.9.11. Consumer support and/or treatment planning shall include communication and information sharing in accordance with Title 18, VSA 7103.

4.10. *Personnel Practices:* The agency shall have written personnel practices, policies and procedures that promote high quality services, and evidence showing that they adhere to their stated practice.

4.10.1. The agency shall employ qualified personnel who are assigned duties and responsibilities that are appropriate to their level of training, education, and experience.

4.10.2. The agency shall have written practices for staff evaluation that include regular supervisory review and must demonstrate that these practices are followed.

4.10.3. The agency shall have a position description for each employee that clearly delineates the functions for which the employee will be held accountable and to whom they report. The position description shall also describe the education and experience required for the position.

4.10.4. The agency shall have written policies prohibiting discrimination based on age, sex, race, sexual orientation, country of origin, disability or other basis of discrimination.

4.11. *Training:* The agency must identify training needs for staff, consumer and families, boards and committees, and demonstrate commitment to address these needs, in accordance with DDMHS policies and procedures, including but not limited to:

4.11.1. A regular assessment of board, staff, and consumers and family training needs.

4.11.2. An annual agency training plan

4.11.3. A new staff orientation training or training process and evidence that it is used

4.12. *Accessibility:* The agency shall conduct its business and ensure service delivery in a way that complies with the American with Disabilities Act (ADA) and meets the DDMHS requirements outlined below

4.12.1. Accessible parking, entrances, private meeting space and bathrooms must be available in each building that is open to the public and/or used for the provision of services funded by DDMHS.

4.12.2. The agency shall provide or arrange for adequate, accessible transportation for consumers who could not otherwise easily reach its services

4.12.3. Information and communication shall be provided to consumers and/or their authorized representatives in a format that is accessible to them.

4.12.4. Written policies and procedures that provide for other accommodations, as determined by the needs of the individual.

4.13. R*ights and Responsibilities of Recipients*: The agency must have a written policy assuring the rights of all service recipients consistent with 18 VSA Section 8728 for persons with developmental disabilities, Act 264 for youth with severe emotional disturbances and DDMHS Community Rehabilitation and Treatment (CRT) Guidelines for adults who are severely mentally ill. All agency programs must no less than annually inform recipients of their rights and responsibilities to include but not be limited to such items as:

4.13.1. The right to receive information about eligibility criteria and funding priorities, available services, programs, and practitioners; practice guidelines, utilization management practices, and grievance procedures.

4.13.2. The right to be treated respectfully, with dignity, and with recognition of the need for privacy.

4.13.3. The right to participate in decision-making regarding their service or treatment plans and ongoing practices.

4.13.4. The right to voice complaints or lodge an appeal without recrimination.

4.13.5. The responsibility to provide information that is needed in order to provide appropriate services or supports.

4.13.6. The responsibility to follow agreed-upon service and support plans.

4.13.7. The right to have a comprehensive service plan that incorporates other relevant service agencies/systems, if desired.

4.13.8. The right to refuse or terminate services, except where services are required by court order.

4.13.9. The right to all legal protection and due process for status as an outpatient and inpatient, both voluntary and involuntary, as defined under Vermont law.

4.14. *Confidentiality*: The agency must have established written policies and practices that protect the confidentiality of consumer information, to include but not be limited to

4.14.1. Staff and contracted service providers' contracts language that explicitly states expectations about the confidentiality of service or care plan information.

4.14.2. Written policies and procedures for assuring informed consent

4.14.3. Written polices and procedures that safeguard medical records and other client information and adhere to Agency of Human Services confidentiality policies

4.15. *Complaints, Grievances and Appeals Procedures*: The agency shall have a written policy and procedures for complaints, grievances and appeals, and for the dissemination of information on dispute resolution to all recipients, consistent with AHS and DDMHS policies and regulations.

4.16. *Local System of Care Plan:* The agency must determine the service needs of the community for each population for which it is designated and develop a plan to address the identified needs within the geographic area.

4.16.1. The determination of needs must be based on information, including satisfaction with agency services and operations, obtained from consumers, their families and guardians, and other relevant private and governmental organizations in the geographic area.

4.16.2. The plan must include the need for services and training, including service and training gaps; resources available within the geographic area to meet the need; and the anticipated provision or need for new or additional services or training to meet the identified gaps.

4.16.3. The agency must facilitate the involvement of people who live in the geographic area in the development of the Local System of Care Plan in accordance with DDMHS policy and procedures.

4.16.4. The plan must be reviewed annually and updated with new information if appropriate. The plan must be fully revised every three years.

5. Specialized Service Agencies: The Commissioner may deem an organization as a DDMHS specialized service agency, and may enter into a contractual agreement with the agency to provide specialized services.

5.1. Specialized services must meet one of three criteria:

5.1.1. A distinctive approach to service delivery and coordination

5.1.2. Services meet distinctive individual needs.

5.1.3. Prior to January 1, 1998, the organization had a contract with DDMHS originally developed to meet service needs as identified in 5.1.1 or 5.1.2.

5.2. The Commissioner may enter into a new Specialized Services contract only if the Commissioner determines that these services are not available from or cannot be developed by a Designated Agency within a reasonable timeframe and in the manner required by the department.

5.2.1. Before entering into new specialized service agreements; the Commissioner shall consult with the Designated Agency within the relevant geographic region(s) to establish whether the specialized service is, or could be made, available by the Designated Agency within a reasonable timeframe and in the manner required by the department, and whether or not the proposed SSA will enhance the local system of care.

5.2.1.1. The Designated Agency shall provide feedback to the Department within 30 days after the request for this information.

5.2.2. Prior to contracting with a new specialized service agency, the Commissioner shall elicit public comment for a period no less than two weeks and/or hold a public hearing to obtain input from interested stakeholders, and will seek input from the State Program Standing Committee.

5.2.2.1. The Commissioner shall consider the public comment and State Program Standing Committee input in determining whether to proceed with a special service agency contract. The Commissioner shall then make a decision that in his/her discretion is in the best interest of the state.

5.3. Specialized service agencies may be local, regional, or statewide.

5.4. Specialized service agencies are not designated agencies. However, specialized service agencies that meet the requirements of Section 5.1.3. are part of the system of care in Vermont, which assures the provision of services. Therefore, the provisions of Sections 2.1.5. - 2.1.6.2. apply to specialized service agencies with respect to the population of clients served by these agencies.

5.5. The Department shall enter into renewed annual contracts with agencies that meet the requirements of specialized service agencies with the same expectation of an ongoing contractual relationship as the Department has with Designated Agencies, unless the specialized service agency's contract is terminated, not renewed or substantially modified for a performance related cause, as provided in Section 5.9. Subject to available funding, the amount and other terms of such contracts shall reflect the agency's role and responsibilities as described in Sections 5.6 and 5.7.

5.6. Responsibilities of the specialized service agency will be determined by the Commissioner during the development of the funding agreement, and shall include clearly delineated roles and responsibilities between the specialized service agency and the Designated Agency in the relevant geographic area(s).

5.7. Specialized service agencies shall meet the same requirements as a designated agency, with the following exceptions:

5.7.1. *Comprehensive Service System*: Specialized service agencies will not be responsible for assuring that a comprehensive and responsive array of services is available within the designated geographical region.

5.7.2. *Local System of Care Plan*: Specialized service agencies will not be responsible for determining the service needs of the community for each population it serves or developing a plan to address the identified needs. They will be responsible, however, for working collaboratively with the designated agency in the development of the local system of care plan.

5.7.3. Other requirements, which do not substantially alter program standards in section 4, may be waived by the Commissioner during development of the contractual agreement.

5.8. Specialized service agencies must be certified by the relevant division as qualified to deliver services.

5.9. An agency meeting the requirements of a specialized services agency may have its contract terminated, not renewed, or substantially modified in the following three circumstances:

5.9.1. At any time, if the provider has been placed on provisional status (see section 7) and has exhibited unwillingness or inability to improve performance as specified in a Plan of Corrective Action and within the timeframes established by DDMHS;

5.9.2. At any time, when major deficiencies in the agency's performance of its contractual agreements are detected by the Commissioner (see 6.15.2.); or,

5.9.3. At any time, if the Commissioner determines the specialized service agency has knowingly disregarded or neglected policies and practices that endanger the health or safety of individuals it serves; violated individuals' human or civil rights; failed to implement a decision resulting from a formal complaint procedure; demonstrated severe fiscal irresponsibility; or falsified data/record keeping.

5.10. A specialized service agency that has been notified by the Commissioner that its contract will be terminated, not renewed or substantially modified shall be given notice and an opportunity to appeal, following the procedures set forth in Section 9 of these regulations.

5.11. The Commissioner may enter into special service contracts other than with specialized service agencies, as described in 18 V.S.A., Chapter 207, Sec. 8912.

6. Process for Initial and Re-designation:

6.1. Each designated agency must be evaluated for re-designation every four years. The Commissioner shall set a schedule for re-designation as required.

6.1.1. The Boards of existing designated agencies may apply for new designation for an additional population, provided they meet the requirements and there is not an existing DA in the geographic area for that population.

6.2. Agencies will be initially or re-designated through a separate, but similar process, for each of the three populations served by DDMHS.

6.3. For agencies undergoing initial or re-designation for more than one population, information required for the re-designation process that is identical across populations can be used for each re-designation process.

6.3.1. For agencies serving more than one population, DDMHS shall have the discretion to determine whether to conduct the initial or re-designation process simultaneously for each population.

6.4. Agencies may apply for **initial** designation if

6.4.1. the Commissioner has notified the designated agency in a geographic area of intent to de-designate

6.4.2. the designated agency decides not to apply for re-designation.

6.5. The Commissioner shall initiate the **initial** designation process by publishing in newspapers of record, as approved by the Secretary of State pursuant to 3 V.S.A. section 839(d), the intent of DDMHS to designate a new nonprofit agency to ensure service provision in a specified geographic area for one of the three populations served by DDMHS. The posting shall include a description of a "Designated Agency", the date for submission of an application, and how to obtain more information.

6.5.1. Requests for initial designation application shall be submitted in writing to the Commissioner by the agency seeking initial designation.

6.6. The Commissioner shall initiate the **re-designation** process by written notice to the President of the Board of Directors and the Executive Director that the agency must submit an application for re-designation.

6.6.1. Written notification by the Commissioner of the need for re-designation will be provided at least three hundred (300) days prior to the expiration of the agency's current designation status.

6.6.2. Agencies desiring re-designation shall submit a letter of intent to apply for re-designation to the Commissioner within thirty (30) days following receipt of the notification.

6.7. A formal application for initial or re-designation shall be submitted by the agency within sixty (60) days of notification of need for re-designation or invitation to apply for initial designation from the Commissioner.

6.7.1. A uniform format shall be developed by DDMHS to be used for all initial and re-designation applications.

6.7.2. The application shall document the agency's ability to provide satisfactory leadership in addressing the needs of the people in its designated area; provide or cause to be provided high-quality and responsive services; meet the criteria established in Section 4; and meet other criteria as established by law and in DDMHS policies and procedures.

6.8. Within ten (10) working days after receipt of the application for initial or re-designation, the application will be reviewed for completeness by DDMHS, and the agency will be notified of the application status.

6.8.1. If the application is not complete, the agency will have thirty (30) days to provide the missing information.

6.8.2. For re-designations, if the missing information is not provided within the necessary timeframe to complete the re-designation process, the agency will be placed on provisional status. The Commissioner may end provisional status once the application is complete (see section 7).

6.9. Upon receipt of the completed application for initial or re-designation, the Commissioner shall publish in newspapers of record within the geographic area of the designated agency, as approved by the Secretary of State pursuant to 3 V.S.A. section 839(d), the intent of the agency to seek initial or re-designation. The posting shall include the purpose and process for initial or re-designation, the time and location of any public forum, if offered and the process for providing written, electronic or fax comments.

6.9.1. DDMHS Program Directors, or their representative, shall solicit public comment for a period no less than two weeks and/or hold a public forum in the geographic area of the agency seeking initial or re-designation.

6.9.2. The public forum, if offered and public comment period shall be held within forty-five (45) days of the receipt of the completed application for re-designation.

6.9.3. Representatives of the State Program Standing Committee shall attend the public forum, if offered.

6.9.4. If an agency is simultaneously requesting designation for more than one population, the public forum, if offered, and public comment period will be structured to solicit information regarding each population.

6.10. The State Program Standing Committee for the relevant service system shall evaluate each application for initial or re-designation against the criteria set forth in Department policy (see Section 4) by reviewing the following types of information, which will be analyzed and summarized by DDMHS staff for the group's review:

6.10.1. The formal re-designation or initial application and supporting materials submitted by the agency.

6.10.2. Supplemental information about agency performance provided by DDMHS, which may include:

6.10.2.1. Records of assessments conducted by DDS and DMH on outcome performance, consumer responsiveness, consumer and family satisfaction, and service quality

6.10.2.2. The agency's record on resolution of disputes and grievances.

6.10.2.3. Information from persons with developmental disabilities or behavioral health needs regarding their satisfaction with service currently available and provided in the geographic area and/or their perceptions of the agency's ability to function as a designated provider.

6.10.2.4. Information from other service agencies and systems in the region about the agency's performance and collaboration.

6.10.2.5. Other materials, such as certification from state or national accreditation bodies, special awards, etc.

6.10.2.6. Testimony presented by citizens at the public forum, if offered and/or or comments submitted in writing, electronically or by fax during the information gathering period by contracted service providers, service recipients, personnel of other state departments and the general public.

6.10.3 If an agency requesting initial designation has been serving persons within DDMHS's purview in another capacity, supplemental information provided by DDMHS about agency performance in the other capacity as outlined in section 6.10.2 will be reviewed by the State Program Standing as outlined in section 6.10

6.11. If an agency has received certification from one or more state or national accreditation bodies, DDMHS may substitute relevant accreditation review findings for related designation requirements.

6.11.1. Agencies requesting a substitution of relevant findings must identify in the initial or re-designation application those areas for which they are requesting substitutions and submit relevant accreditation findings and reports related to that substitution with their application for initial or re-designation.

6.12. The State Program Standing Committee shall submit a written recommendation to the Commissioner regarding initial or re-designation, and supporting documentation for this recommendation, no later than ninety (90) days after receipt of the completed application for initial or re-designation.

6.13. The Commissioner, in consultation with the DDMHS Program Director, shall review the State Program Standing Committee's recommendation and other materials regarding agency performance, and make a decision regarding agency re-designation or initial designation within one hundred ten (110) days after receipt of the completed application for re-designation.

6.13.1. The timeframe of one hundred ten (110) days after receipt of the completed application for re-designation may be extended if additional fact-finding is deemed necessary by the Commissioner. This extension shall be no longer than sixty (60) days.

6.14. The Commissioner shall notify each applicant organization regarding the designation decision within one hundred twenty (120) days after receipt of the completed application for re-designation.

6.14.1. If section 6.13.1. is invoked, this timeframe shall be extended up to one hundred eighty (180) days after receipt of the completed application for re-designation.

6.15. If the Commissioner determines that an agency has not fully met the initial or re-designation requirements and/or responsibilities, the Commissioner may:

6.15.1. In a situation in which there are minor deficiencies in meeting the designation requirements and/or responsibilities, notify the agency that it will be initially or re-designated, with the understanding of the need for corrections, and a time limit and plan for such corrections.

6.15.1.1. "Minor deficiencies" are those that do not affect the agency's ability to meet the essential elements of the requirements contained in Section 4 of these rules.

6.15.1.2. "Essential elements" refer to the specific principles, procedures, or actions described in each of the requirements contained in Section 4 of these rules, which are minimum standards that designated agencies must meet.

6.15.2. For re-designations: In a situation in which there are major deficiencies in the agency's ability to meet the essential elements of the designation requirements and/or responsibilities, notify the agency of intent to de-designate and immediately place the agency on *provisional* status (see sections 7 and 8).

6.15.2.1. "Major deficiencies" are those that affect the agency's ability to meet the essential elements of the requirements contained in Section 4 of these rules. This also refers to situations in which the designated agency has knowingly disregarded or neglected policies and practices that endanger the health or safety of individuals it serves; violated individuals' human or civil rights; failed to implement a decision resulting from a formal complaint procedure; demonstrated severe fiscal irresponsibility; or falsified data/record keeping.

6.15.2.2. "Essential elements" refer to the specific principles, procedures, or actions described in each of the requirements contained in Section 4 of these rules, which are minimum standards that the designated agencies must meet.

6.15.2.3. A sufficient number of minor deficiencies may result in an agency being deemed by the Commissioner as not able to meet the essential elements of the designation requirements and/or responsibilities.

6.16. For initial designations: If the Commissioner determines that an agency has failed to meet the designation criteria, the Commissioner may designate the agency on a *provisional* basis (see Section 7.) or deny designated agency status to the organization

6.16.1. An agency not chosen for initial designation shall have the right to appeal the decision pursuant to the process set forth in section 9 of these regulations.

7. Provisional Status

7.1. The notification of provisional status may serve as the notification of intent to de-designate an agency or cancel a special service agency contract.

7.2. The Commissioner may place an agency on provisional status without intent to de-designate or cancel the special service contract.

7.3. An agency may be placed on provisional status as follows:

7.3.1. As a result of the initial designation when major deficiencies are detected by the Commissioner (see 6.15 –6.16);

7.3.2. As a result of the re-designation process, where major deficiencies are detected by the Commissioner (see 6.15);

7.3.3. At any time, when major deficiencies are detected by the Commissioner (see 6.15); or

7.3.4. At any time, as a result of a determination by the Commissioner that a designated agency or special service agency has knowingly disregarded or neglected policies and practices that endangered the health or safety of individuals it serves; violated individuals' human or civil rights; failed to implement a decision resulting from a formal complaint procedure; engaged in severe fiscal irresponsibility; or falsified data/record keeping.

7.4. The notification of provisional status from the Commissioner to the Agency shall include:

7.4.1. The reasons for such action;

7.4.2. The conditions under which DDMHS may continue to purchase services from the agency while under provisional status; and

7.4.3. The requirements for a Plan of Corrective Action in order to be reconsidered for re-designation, including:

7.4.3.1. The specific areas needing correction

7.4.3.2. The timeframes within which the elements of the plan of correction will be addressed, not to exceed 180 days.

7.4.3.3. The criteria upon which the Plan of Corrective Action, and the subsequent report on implementation, will be evaluated for acceptability by the Commissioner

7.5. The agency shall submit a Plan of Corrective Action to the Commissioner no later than thirty (30) days after receipt of the Commissioner's notification of provisional status.

7.6. The Commissioner, with advice from the DDMHS Program Director, will review the Plan of Corrective Action and notify the agency, in writing, of its acceptability within thirty (30) days of receipt of the Plan.

7.6.1. If the Plan of Corrective Action is deemed acceptable by the Commissioner, the agency provisional status will be extended for the timeframe specified within the Plan.

7.6.2. If the Plan of Corrective Action is deemed not acceptable by the Commissioner, the Commissioner shall notify the agency, in writing, of intent to proceed with de-designation or contract cancellation or the need for additional information. This extension for additional information will be no longer than 15 days.

7.7. At the end of the specified timeframe, the agency shall submit a Report to the Commissioner documenting that the corrections were made in accordance with the Plan of Corrective Action.

7.7.1. The Commissioner shall use discretion in selection of the appropriate method for evaluation of the corrective action(s), including, but not limited to, review by Department staff, review by an external population-specific state board or committee, or review by a consultant with expertise in the area of concern.

7.7.2. If the Corrective Actions are not acceptable by the Commissioner, the Commissioner shall notify the agency, in writing, of intent to proceed with de-designation or contract cancellation or continuation of provisional status. Continuation of Provisional status will be granted for a period not to exceed 180 days and will only be granted in situations in which the agency is making significant gains and is expected to meet or exceed all requirements within the additional timeframe granted.

7.8. The Commissioner shall notify the agency, in writing, of the decision regarding the continuation of provisional status within thirty (30) days of receipt of the Report.

7.9. While an agency is under provisional status for a specific population, DDMHS may:

7.9.1. Suspend or amend terms of the annual contract or other service agreements between DDMHS and the agency, as allowed by contract.

7.9.2. Contract with other agencies to ensure uninterrupted service provision and quality.

7.9.3. Initiate the process to identify a new designated agency for that geographic area.

7.9.4. Take additional actions, as determined necessary by the Commissioner, to protect the well being of service recipients.

8. Process for De-designation and/or Cancellation of Specialized Service Agency Contract

8.1. A designated or special service agency may be notified by the Commissioner of intent to proceed with de-designation or cancellation of a SSA contract in three circumstances:

8.1.1. As a result of the re-designation process, if the agency has been placed on provisional status and has exhibited the unwillingness or inability to improve performance as specified in the Plan of Corrective Action and within the timeframes established by DDMHS;

8.1.2. At any time, when major deficiencies are detected by the Commissioner (see 6.15); or,

8.1.3. At any time, if the Commissioner determines that a designated or Specialized Service agency has knowingly disregarded or neglected policies and practices that endanger the health or safety of individuals it serves; violated individuals' human or civil rights; failed to implement a decision resulting from a formal complaint procedure; demonstrated severe fiscal irresponsibility; or falsified data/record keeping.

8.2. The date for de-designation or contract cancellation shall be determined by the Commissioner, and shall be dependent on the actions necessary to ensure that persons with developmental disabilities or behavioral health needs in the geographic area of the agency continue to receive the supports and services that they need.

8.2.1. The agency to be de-designated or to have its contract cancelled shall be notified in writing of:

8.2.1.1. The date for de-designation or contract cancellation;

8.2.1.2. The actions DDMHS will undertake to replace the agency's functions and ensure high-quality service provision to persons living in the geographical area; and,

8.2.1.3. The circumstances by which DDMHS will continue to purchase services through the agency until de-designation or contract cancellation occurs.

8.2.2. The agency to be de-designated or to have its contract cancelled must inform its current consumers of the change in the agency's status, and provide them with information about future arrangements, as agreed upon with the Department.

8.3 At any time during the de-designation or cancellation process for a specific population, DDMHS may:

8.3.1 Suspend or amend terms of the annual contract or other service agreements between DDMHS and the agency, as allowed by contract.

8.3.2 Contract with other agencies to ensure uninterrupted service provision and quality.

8.3.3 Initiate the process to identify a new designated agency for that geographic area.

8.3.4 Take additional actions, as determined necessary by the Commissioner, to protect the well being of service recipients.

9. Designated and Special Services Agency Right to Appeal: An agency that has been notified by the Commissioner of intent to de-designate or not to grant initial designation status shall have the right to appeal the decision. Any specialized service agency that has been notified by the Commissioner of intent to cancel a contract shall have the right to appeal the decision to (a) cancel or not renew its contract, or (b) substantially modify its role and responsibilities or the contract which reflects the agency's role and responsibilities as described in Sections 5.4. - 5.7. Any such notice to a specialized service agency that meets the requirements of Section 5.1. shall state the performance-based grounds under Section 5.9. for the proposed action by the Commissioner.

9.1. *Notice of Appeal*. A written Notice of Appeal, stating the grounds for such appeal, must be filed with the Commissioner within 10 days following the agency's receipt of notification from the Commissioner of the intent to de-designate the agency, cancel or not renew agency contracts or not to designate the agency initially. Agencies do not have the right to appeal decisions related to placement on provisional status.

9.2. *Notice of Hearing*. As soon as practicable, a date certain shall be set for the appeal hearing, with notice to all parties. Within forty-five (45) days of the filing of the Notice of Appeal, a hearing shall be conducted by the Commissioner or his/her designee (hereafter "Commissioner"). The purpose of the hearing shall be to assure that the Commissioner has considered all pertinent information available prior to making a final decision regarding the agency's status.

9.3. *Disclosure of Information*. Upon request of any party related to the appeal, the Department shall promptly provide the party with all public documents and records it relied upon in reaching its decision.

9.4. *Conduct of Hearing*. At the hearing, the parties may present evidence and witnesses and be represented by counsel. The record of the hearing shall include a tape recording of the hearing, records relied upon, and any other information deemed by the Commissioner to be necessary for the proceeding. The Department of Developmental and Mental Health Services shall retain this record for safekeeping for a reasonable time. The proceedings shall be open to the public. When public access threatens confidentiality rights, any party to the proceeding may seek appropriate measures to protect confidentiality, and the Commissioner shall take necessary steps to protect confidentiality.

9.5. *Notice of Decision.* The Commissioner shall issue a final written decision within thirty (30) days of the hearing based upon the evidence presented orally and in writing. The decision shall be sent to all parties.

9.6. If any of the parties wish to appeal the decision of the Commissioner, they may submit an appeal, in writing, to the Secretary of the Agency of Human Services within ten (10) days of receipt of the Commissioner's decision. The Secretary of the Agency of Human Services shall base his/her review on the record presented to the Commissioner.

9.7. The Secretary of the Agency of Human Services shall issue a written decision within 30 days. The decision of the Secretary of the Agency of Human Services will be the final action of the agency. If further review is available to an aggrieved party, it shall be brought in the court authorized to review civil matters within 10 days of receipt of the final Agency of Human Services action and shall be based upon the record established at the hearing before the Commissioner and the decision of the Secretary of the Agency of Human Services.

10. Additional Agency Reviews

10.1. DDMHS will routinely review the services offered or supported by the designated or special service agency to ensure that they are operated in compliance with department rules, regulations, contract/grant requirements, division mission, and the local service plan. These reviews may include site visits and may or may not be announced in advance.

10.2. DDMHS may additionally perform investigations of actions of an agency in response to complaints or as a result of information received from other sources. Such investigations shall include direct communication and deliberation with the entity filing the complaint or providing the information to assure that the Department has accurate and complete information. Agency reviews may or may not be announced in advance.

10.3. Findings of these reviews will be considered in the re-designation and contract renewal process.