Rulemaking Process – Public Input

On March 10, 2022, the DAIL Commissioner distributed to the members of the State Program Standing Committee (SPSC), the advisory board established in 18 V.S.A. § 8733, an initial draft of the proposed rule, for advice and recommendations. As requested by the advisory board in February 2022, a plain language document explaining the proposed changes was developed and shared with the board on March 10, 2022. During the SPSC meeting on March 17, 2022, DAIL staff and the SPSC members reviewed and discussed the draft. The SPSC members offered comments and suggested some changes. The SPSC was given an additional 30 days to provide any additional advice or recommendations in writing to DAIL. On April 18, 2022, Vermont Legal Aid (VLA), which is represented on the SPSC, submitted to DAIL its recommended changes to the proposed draft. No other written comments were received from the SPSC. The recommendations from VLA and the SPSC were reviewed by DAIL staff, and several were adopted and incorporated into the proposed rule.

Prior to drafting the proposed rule changes, DAIL consulted with two licensed psychologists with expertise in the diagnosis of intellectual disability. DAIL also met with Agency of Education staff involved with early education programs for children under age 6. The purpose was to align eligibility criteria to the extent feasible to streamline processes for families across state programs. DAIL also met with staff from provider agencies to get feedback on a draft of the proposed changes.

Following ICAR review, the proposed rule was filed with the Secretary of State, at which time DAIL sent information regarding the proposed rule and public comment period to the following organizations: Vermont Care Partners, Developmental Disabilities Services Agency Directors, Designated Agency Executive Directors, the DDS State Program Standing Committee, Vermont Family Network, Green Mountain Self-Advocates, the DAIL Advisory Board, Vermont Coalition of Disability Rights, Vermont Legal Aid, Vermont Developmental Disabilities Council, and Vermont Center for Independent Living. The proposed rule was posted on the DAIL website, and two (2) virtual public hearings were held. In addition, DAIL invited the public to submit written comments on the rule during the public comment period.

Both during and after the public hearings, DAIL received public comments from several of the above stakeholders, among others. DAIL has considered the comments received and has incorporated suggested changes, as appropriate.

Below is a summary of the comments received and DAIL's responses to those comments.

B. Public Comments and DAIL's Responses

#	**Public Comment Received**	**Department Response**
	General Comments	
1.	The Vermont Developmental Disabilities Council applauds the Developmental Disabilities Services Division (the Division) for providing robust opportunities for public engagement as part of the rule-making process. The Division provided the State Program Standing Committee (SPSC), the advisory board established in 18 V.S.A. §8733, with an initial draft of the proposed rule, seeking advice and recommendations in March 2022. A plain language document explaining the proposed	The Department appreciates the positive feedback.

#	Public Comment Received	Department Response
	changes was developed and shared with the board. DAIL staff and the SPSC members reviewed and discussed the draft. The SPSC members offered comments and suggested some changes to the proposed draft.	
2.	A family member indicated that the rules should be amended to allow the use of cannabis for medicinal purposes for people receiving services in residential settings. People who are using cannabis medicine should have access to both residential programs and their cannabis medicine.	The requested content is beyond the scope of this *Rule*, as required by 18 V.S.A. 8726(a) & (b). Further, while the use of marijuana for medicinal purposes is permitted under Vermont law, it remains unlawful under federal law. As Medicaid funds are used to provide the services described in these rules, the Department declines to include language that could be construed to authorize the violation of federal law, which, in turn, could jeopardize the availability of federal funding. No change to the *Rules* will be made in response to this comment.
3.	A family, including a person with a developmental disability, commented that "Federal law allows up to five adults with ID/DD (intellectual disability/developmental disability) to live together under the same roof. We would like the Vermont policy that no more than two adults with developmental disabilities can reside together in the same home under the Shared Living arrangement be changed to align more with Federal law. Also, would like to see that housing could be created for more than 3 individuals residing together without requiring licensure and have DAIL/DDSD work with licensure to change this requirement. Perhaps licensure shouldn't be based on # of people being served within a residence, but on level of need of the clients residing together." The Developmental Disabilities Housing Initiative, a group of approximately 80 parents advocating for the expansion of housing options in DDS, also recommends changing the policy to allow up to five individuals to be supported in a shared living arrangement to align with what is allowable under Federal law.	Shared Living is not defined in this *Rule*. The definition, referenced in Developmental Disabilities Services (DDS) System of Care Plan, indicates that it is for 1-2 individuals being supported by a caregiver in a home. Federal IRS law does allow for the exclusion of payments for full time home care of for up to five adults with a disability being cared for by a Shared Living provider (also called "adult foster care"). However, Vermont defines adult foster care as "provision of 24-hour home care services for 1-2 adult persons with a disability in the residence of the person providing home care services" (33 V.S.A. §502(1). This rule was added in 2007 to clarify that payments to adult foster care providers could be excluded

#	Public Comment Received	Department Response
		from homeowners' incomes when calculating VT property taxes. In addition, as noted in the comment, the licensing rules, which are overseen by the Department's Division of Licensing and Protection, are separate from this rule. They currently require homes providing care for 3 or more unrelated persons to be licensed. While DDSD is open to exploring the possibility of expanding the number of persons who could be supported in Shared Living, the other rules noted above would need to be changed first. Consideration to a change in DDSD policy would be through the DDS System of Care Plan where the definition of Shared Living currently exists. The Department will not make any change to the *Rule* at this time in response to this comment.
4	A parent recommended that the DDSD implement significant changes, now, in the Regulations and the SOCP so that Vermonters have meaningful choice in their living arrangements. This parent endorsed the specific recommendations for changes made by another commenter.	The Department will respond to the specific recommendations in the comments below where they are referenced.
5	The Vermont Developmental Disabilities Council (VTDDC) "recommends embedding the core elements of CMS' HCBS (Home and Community-Based Services) Settings into Vermont's DS Regulations." VTDDC provided considerable detail reiterating the requirements of the federal HCBS setting rules which include services being integrated into the community, providing full access to community life, choice and control of services and daily life, lease or lease-like agreements between providers and individuals in provider-controlled home settings, etc.	The *Rules* currently reference the requirement to follow the Federal Centers for Medicare and Medicaid Services (CMS) HCBS setting rules in the provision of HCBS (7.100.2(u)), Community Supports (7.100.2(j)) and in Home Supports (7.100.2(v)). The Department agrees to embed additional language regarding compliance with the

#	Public Comment Received	Department Response
	They also recommend that the State provide a model agreement for Shared Living arrangements in lease-like protections to ensure consistency across providers.	HCBS rules. See the response to comment # 25 for details. The Department does not believe it is necessary or appropriate to repeat the detailed requirements of the federal HCBS rule in this *Rule* for the following reasons. DAIL is currently obligated to follow the HCBS settings rule as part of its agreement with CMS in its operation of HCBS (VT-GCH-Extension-STCs-Technical-Corrections-10-12-2022.pdf (vermont.gov)). The agreement also specifies quality measures and reporting requirements to ensure compliance with the federal rules. Additionally, the State has approval of its plan to comply with the setting rules in its Comprehensive Quality Strategy and Statewide Transition Plan. The Department intends to develop a model of a lease-like agreement for Shared Living providers and a policy related to individuals having lockable doors for their private space as part of the Statewide Transition Plan.
6	A family, including a person with DD, would like to see the Regulations encourage the expansion of housing and residential service options for adults with developmental disabilities, and any barriers/obstacles to new and creative housing options should be removed from the Regulations.	The Department is committed to expanding housing support options for people with developmental disabilities. The Department has initiated efforts to comply with the recently passed Act 186 that includes a focus on expanding housing options. Act 186 requires the Division to explore and pilot new housing support models. This work has just begun, and it is not yet known what models will be

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		recommended for development and what current rules would be barriers to their creation. Greater stakeholder input will be needed regarding changing some rules to allow for the expansion of housing support options in order to avoid unintended consequences for recipients. The Division is open to changing the rules as the work progresses.
	The Regulations should align with the HCBS Settings Criteria and provide meaningful choices for residential living situations for individuals requiring 24-hour supports	See response to comment # 5.
7	The Developmental Disabilities Housing Initiative, which is a group of approximately 80 parents advocating for and supporting the development of stable, service-supported housing communities for their adult daughters and sons, many of whom have significant support needs and would benefit from the option of living with peers, would like to see the regulations change to at least lay the groundwork by removing barriers so that new housing models can emerge. The commenter provided recommendations for changes to specific sections of the *Rules* that are seen as barriers to additional housing support options. Those recommendations are included below in the specific sections of the *Rule*.	As noted above in response to comment #6, the Department is committed to working with stakeholders on expanding housing options. It is not yet known what those options will be. The Department responds to the recommendations related to specific sections of the *Rule* below.
8	VTDDC recommends that the Person-Centered Planning Rule Plan of Correction should be incorporated in the R*ules* by reference. Vermont lacks person-centered planning processes that are free from undue conflicts of interest. VTDDC notes that the Vermont Agency of Human Services submitted a proposed plan of correction to CMS to address the lack of conflict-of-interest free case management in Vermont. When the Plan of Correction is approved by CMS it will be added to the Global Commitment to Healthcare waiver as Attachment Q. The Plan of Correction should be incorporated in the new *Rule* by reference.	The Department disagrees with this recommendation. The *Rules* lay out the current requirements for the provision of HCBS. Vermont has submitted its Plan of Correction and it has not yet been approved by CMS. When Vermont receives approval and then implements the Plan of Correction, it is likely that considerable changes to these *Rules* will be required. It is not yet known what the changes will be, so they cannot be incorporated in this *Rule* at this time.

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		No change will be made in response to this comment.
9	Vermont Developmental Disabilities Council recommends that the Department "embed an Independent Ombudsman in the *Rules*: Vermonters with disabilities who are receiving home and community-based services for a developmental disability need an outside independent entity to address complaints and conduct independent investigations. These beneficiaries should have access to a service that has been embedded in Choices for Care since its inception".	The list of available services and supports is no longer required to be adopted by rule according to Act 186 which was approved in the 2022 legislative session. The Department agrees that the development of an ombuds program for DDS should be a special initiative (See 7.100.5(h)). Special initiatives are proposed in the DDS System of Care Plan. The draft System of Care Plan is currently out for public comment. The development of an ombuds program is listed as one of those initiatives in the Draft Plan. The Department does not agree with including reference to a service that does not currently exist in the *Rule.* No change to the *Rule* based on this comment will be made at this time.
	7.100.1 Developmental Disabilities Services (DDS) Purpose and Scope	
10	**7.100.1 (a)** A parent who has worked closely with a group of other parents on advocating for an expansion of housing options for people with DD commented that "the purpose of the Regulations is to implement the DD Act (18 V.S.A., Chapter 204A), and not be a barrier to implementing the Act. DAIL and DDSD need to acknowledge that the State had fallen short of meeting one of the key principles of service in the Vermont Developmental Disabilities Act of 1996 – specifically the State has not met its obligation to provide meaningful choices when it comes to providing residential living situations for individuals requiring 24-hour supports. The DD act indicates that "People with developmental disabilities and their families cannot make good decisions without meaningful choices about how they live and the kinds of services they	The Department acknowledges that there is currently limited choice for most people who need 24- hour Home Support. The 2021 DDS Annual Report indicates that 90% of the 1526 people receiving 24- hour Home Support live in Shared Living arrangements, 5% live in Staffed Living and 5% live in group homes. Staffed Living and Group Living options generally serve people with more significant behavioral and/or medical issues. There are a variety of reasons that Shared Living has become

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	receive. Effective services shall be flexible so they can be individualized to support and accommodate personalized choices, values, and needs and assure that each recipient is directly involved in decisions that affect that person's life." In reality, the majority of individuals who need 24-hour support have only one choice, which is to live with a shared living provider. The Department needs to make changes to its rules to foster choice and not create barriers to meeting the Principles of Service outlined in the DD Act. The commenter provided recommendations for changes to specific sections of the *Rules,* which are included below. Another parent endorsed these recommendations.	the predominant option, but two major factors are the lack of availability of affordable housing and relative cost-effectiveness of Shared Living compared to other arrangements requiring staffing. As noted above, the Department is committed to expanding housing support options for people with developmental disabilities. The Department has initiated efforts to comply with the recently passed Act 186 that includes a focus on expanding housing options. The Department responds to the recommendations related to specific sections of the *Rule* below.
	7.100.2 Definitions - General Comment	
	No general comments were received.	
	7.100.2 Definitions – comments by section	
11	**7.100.2(j)** Vermont Developmental Disabilities Council commends the Department for including language in the definition of Community Supports to clarify that transportation is included in this service.	This language was added to clarify that both workers employed by agencies and those who are independent direct support workers can be reimbursed for mileage for transporting people when they are receiving Community or Employment Supports.
12	**7.100.2(v)** The definition of Home Supports Includes "compliance with HCBS rules which emphasize choice, control, privacy, tenancy rights, autonomy, independence and inclusion in the community." A parent commented that currently, for the majority of people, there really is no choice for Home Supports other than Shared Living if an individual requires 24-hour supports. Another parent endorsed this comment.	See response to comment #10.
13	**7.100.2(ff)**	HCAR 7.100.2(ff) aligns with

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	A parent commented that "in subsection (ff)(1) a "facility" is not defined, but the Regulations should clearly permit individuals to reside in an out of state residential community (e.g., Visions in New Hampshire) in an adjoining state just as the Regulations allow for a person to remain a Vermont resident if the person lives with a Shared Living Provider in an adjoining state." Another parent endorsed this comment.	the requirements of Health Benefits Eligibility and Enrollment (HBEE) Rule 21.01, which states that health benefits will be provided to an eligible Vermont resident, and HBEE Rule 21.03, which provides that, to be a Vermont resident, one must meet the conditions in §§ 21.04 through 21.08 of the Rule. More specifically, HBEE Rule 21.04 currently provides that an individual is a Vermont resident *if a state agency arranges for* the individual to be placed in an out-of-state "institution." HBEE Rule 3.00 defines "institution" as "an establishment that furnishes (in single or multiple facilities) food, shelter, and some treatment or services to four or more individuals unrelated to the proprietor." For clarity and consistency with the HBEE Rule, the Department agrees to strike from 7.100.2(ff)(1), "school, facility, correctional center, or hospital" and replace it with, "institution, as defined in Health Benefits Eligibility and Enrollment (HBEE) 3.00," No additional changes will be made at this time. The *Rules* as written do allow for a person to reside in an out of state setting if the setting meets the criteria outlined in the *Rule* as well as the requirements in the DDS System of Care Plan. A person could reside in an out of state residential community in an adjoining state if the person was placed there by the State or by a provider who agrees to sub-contract with an out of state provider. Before placing an individual in

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		an out-of-state institution, the Department or Designated Agency considers numerous factors, which include, but are not limited to, the following: -Ability of the provider to comply with all State and Federal Medicaid rules, policies and guidelines - Guardianship – court jurisdiction - Access to Crisis services - Nursing delegation of nursing tasks to non-nurse caregivers - Adult Protective Services jurisdiction for reporting and investigating abuse and neglect - State-specific laws (e.g., administration of psychotropic drugs) - DA/SSA oversight – especially when person lives a long distance from the VT border.
14	**7.100.2(ff)** A parent commented "The state should allow for HCBS funding to be used for out-of-state authorized services, including housing, if there are no options to meet the client's needs within the state." Another parent endorsed this comment.	See response to comment #13. As a point of clarification, while HCBS funding can pay for supportive services in homes, it cannot be used to pay for "housing" costs such as room and board. Room and board are covered by a person's SSI or other sources. So, the department would not include the term "housing" in this section. Also, the Department disagrees with adding language to allow for out of state placements when "there are no options to meet the client's needs within the state." The State or designated provider already has the authority to place a person in an out of state setting when needed to meet a person's needs. They have the authority to consider available

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		options. Recipients or their guardians also have the right to appeal the decisions of the State or provider.
	7.100.3 Criteria for Determining Developmental Disability – general comments	
15	A family, including a person with DD, commented: "Expand the definition of individuals that qualify for the HCBS Waiver to include those individuals that fall on the Fetal Alcohol Spectrum like the Federal government defines today. This is a developmental disability, and many students leave high school with no supports and services which are greatly needed. Fetal Alcohol in utero is organic damage to the brain and often these clients plateau and will never achieve independence."	Individuals who have Fetal Alcohol Spectrum who also meet the definition of Developmental Disability as outline in the proposed *Rule* would be eligible. The Developmental Disabilities Act, in 18 V.S.A. §8722 defines who is to be served in the DDS program to include people with an intellectual disability, or autism. The purpose of these *Rules* is to provide specific details for the implementation of the DD Act. Adding new qualifying diagnoses would require amending the Act. The Department will not make any changes in response to this comment.
16	A director of a provider agency indicated that the changes to the language related to eligibility of young children is clearer.	The Department appreciates the positive feedback.
17	The Vermont Developmental Disabilities Council commends the Department for the amendments to the eligibility criteria to align with the 2019 VT Supreme Court ruling in *R.R.*	The Department appreciates the positive feedback.
	7.100.3 Criteria for Determining Developmental Disability – comments by section	
18	**7.100.3(d)(1)** Vermont Legal Aid indicated appreciation of the inclusion of the revised language clarifying the use of the standard error of measurement in testing for determining eligibility based on diagnosis of intellectual disability.	The Department appreciates the positive feedback.
19	**7.100.3(d)(1)** A staff person from a provider agency indicated that description of eligibility is clear and helpful. In terms of IQ and VT Supreme Court decision, her agency has had a number of applicants that now qualify for services due to that change. So, the change mattered.	The Department has been following the Supreme Court ruling in its eligibility determinations since the decision was made in 2019. The changes in the *Rule* were made to codify the current practice in eligibility determinations.
20	**7.100.3(d)(1) and 7.100.3(k)** A parent said the	The Department appreciates the

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	allowing for consideration of the standard error of measurement in IQ testing and adaptive behavior assessment was helpful.	positive feedback.
21	**7.100.3(d)(1)** A service provider noted that the increase of IQ standard expands who is eligible and is concern that this will lead to a resource crunch.	The proposed change to the *Rule* does expand who could be eligible for services and increase pressure on the available program budget. The Department shares this concern but is required to follow the Supreme Court ruling. To date, as noted in the filing of the proposed *Rule,* the Department has not experienced a significant increase in applicants who are eligible based upon the change and the financial impact has not been significant to date. No change will be made based on this comment.
22	**7.100.3(i)(5)** requires that evaluations for children under 6, a "developmental-behavioral or neurodevelopmental disabilities pediatrician or pediatric neurologist shall perform the assessment or be part of the assessment team". A licensed psychologist commented that this is not currently practical due to lack of clinicians with those qualifications in VT. He believes that licensed psychologists or psychiatrists are appropriate to make diagnoses of autism spectrum disorders for young children.	The Department agrees with this recommendation and that the remaining qualifications of evaluators listed in **7.100.3(i)** are adequate to ensure that evaluators have the appropriate qualifications to render autism spectrum diagnoses for young children. The department will strike the following sentence from **7.100.3(i)(5)**: "For evaluations of children from birth to age six, a developmental-behavioral or neurodevelopmental disabilities pediatrician or pediatric neurologist must perform the assessment or be part of the assessment team."
23	**7.100.3(j)(1)** indicates that evaluations to determine whether a person has an autism spectrum disorder should be based on a "comprehensive review of history from multiple sources, including developmental history, medical history, psychiatric history with clarification of prior diagnoses, educational history, and family history." A licensed psychologist suggested that language be added to	The Department agrees with this recommendation and will add **7.100.3(o):** "(o) Missing information to document developmental disability

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	address when the historical information cannot be found, even after repeated requests to acquire it.	There may be circumstances in which considerable effort is made to obtain all the required history and documentation to determine whether a person has a developmental disability, but the required information cannot be obtained. This may include situations in which there are no available informants to document a person's functioning prior to age 18, previous records cannot be obtained, or do not exist. In these circumstances, the determination of whether the person meets the criteria for having a developmental disability should be based upon the current assessment and all available information, including other life factors that occurred after age 18 that could potentially impact cognitive, adaptive, or other functioning."
	7.100.4 Recipient Criteria – general comments	
	No general comments were received.	
	7.100.4 Recipient Criteria – comments by section	
24	**7.100.4 (b)** A parent commented that "Subsection (b) cross-references 7.100.2(ff)(1). Again, if an individual is considered to maintain Vermont residency when the individual resides in an adjoining state, that individual should have that same consideration for a residential community in an adjoining state." Another parent endorsed this comment.	See response to comment #13.
	7.100.5 Application, Assessment, Funding Authorization, Programs and Funding sources, Notification, Support Planning and Periodic Review – general comments	
	There were no general comments.	
	7.100.5 Application, Assessment, Funding Authorization, Programs and Funding sources, Notification, Support Planning and Periodic Review – comments by section	
25	**7.100.5(d)(1)(B)** The Vermont Developmental Disabilities Council recommends: "The State must provide a Notice of Rights for HCBS recipients – in plain language – detailing the rights enumerated in the settings and person-	The Department agrees that applicants and recipients must be notified of their rights outlined in the CMS HCBS rules. We agree to add to

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	centered-planning rules and include it in the Rules."	**7.100.5(d)(1)(B)**, which relates to initial screening, as follows: "Notifying the applicant of the rights of recipients in plain language, including the procedures for filing a grievance or appeal and their rights as outlined in the federal CMS HCBS rules;" and add to **7.100.5(l)(3)** which relates to the annual review process with the recipient, as follows: "As part of the periodic review, the agency or Supportive ISO must ask each recipient about his or her satisfaction with services, and provide each recipient and individual's authorized representative with an explanation of the rights of recipients, including those outlined in the federal CMS HCBS rules, and how to initiate a grievance or appeal (See 7.100.9 and 8.100)." And add to **7.100.6(d)(3)(G)**, which relates to tasks of a QDDP for people who self or family manage as follows: "Inform the individual about his or her rights as outlined in the Developmental Disabilities Act of 1996 and the rights outlined in the federal CMS HCBS rules; and" and add to **7.100.10(d)(4)(A)**, which relates to pre-service training of workers as follows: (A) Individual rights, as specified in 18 V.S.A. §8728 and as outlined in the federal CMS HCBS rules:"

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		and add to **7.100.11(b)(1)(C)**, which relates to the certification of providers, as follows: "Provide services and supports that foster and adhere to the Principles of Service (See 18 V.S.A. §8724) and the Rights guaranteed by the Developmental Disabilities Services Act (See 18 V.S.A. §8728) and the rights outlined in the federal CMS HCBS rules."
26	**7.100.5(f)** This section indicates that when authorizing services, the authorization must be based on the most cost-effective method of meeting a person's needs. A family, including a person with DD, commented "Provide services including housing options that are based on a client's needs and not just on the lowest cost option of providing a specific service."	As indicated in **7.100.5(e)**, a person's plan of services must be based upon an assessment of need. **7.100.5(f)** does indicate that the authorization of funding must be based on the most cost-effective method of meeting the person's needs. The last sentence in this section indicates "When determining cost effectiveness, consideration will be given to circumstances in which less expensive service methods have proven to be unsuccessful or there is compelling evidence that other methods would be unsuccessful." Cost-effectiveness considers both the cost and the anticipated effectiveness of services. So, the lowest cost option is not always the one that is most cost-effective. The Department has the responsibility to ensure that it manages the DDS program within its legislatively appropriated budget. Removing the language in this section related to cost-effectiveness would impact the Department's ability to manage within available funding. Additional funding would be needed to remove the language related to cost-effectiveness.

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		That being said, the Department is committed to expanding supported housing options and exploring the necessary resources to expand options. Additional work will be needed regarding how to balance offering meaningful choices for service options and managing within available funds. No change to the *Rules* will be made at this time.
27	**4.7 of current Regulations.** Vermont Legal Aid objects to the removal of section 4.7 of the current regulations that describes the programs and services available within DDS. Although Act 186 no longer requires the eligibility and access criteria to be established in rule, *nor does it prohibit* leaving this section in place as it is. Given that the System of Care Plan and these regulations operate in tandem, there is no burden to leaving them in place in the regulations and including them in the System of Care Plan. This improves access to understanding the available programs, to have them exist in both documents. Even beneficiaries and family members who are long-time users of the programs are often unaware of the System of Care Plan. Limiting their placement to only one of these two documents that govern these programs is, in our view, less transparent. The notice and comment process, and the oversight of LCAR regarding these criteria, is to the benefit of our system, and we request that the Department choose to leave Section 4.7 in place.	The Department disagrees with this recommendation. Act 186 removed the requirement to adopt certain categories of the System of Care Plan through the rulemaking process. The intention of the change was to allow the Department to make changes in those categories without going through the lengthy rulemaking process. The DD Act requires the Department to submit proposed changes to the System of Care Plan to the DDS State Program Standing Committee for recommendations. The Department also seeks robust stakeholder input prior to developing the draft Plan, publishes the draft Plan, holds public hearings and solicits written comment during a public comment period. The Department believes this is a sufficient public input process. The Department believes that the *Rules*, with this proposed change, are sufficiently transparent regarding the available programs and funding sources. Section **7.100.5(g)** specifies that the available programs and details related to

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		eligibility for these programs are described in the DDS System of Care Plan. Both the *Rules* and the System of Care Plan can be located on the Division website. No change will be made based on this comment.
28	**7.100.5(i)(2)(D)** An internal DDSD staff and the DS Directors recommend that this section be amended as follows: "If the assessment determines the person has a developmental disability but does not meet a funding priority to receive Home and Community-Based Services funding, the notice shall state that the DA shall continue to offer information and referral services and shall place the person's name on a waiting list."	The Department agrees with this recommendation. This is clearer, as meeting funding priorities relates only to Home and Community-Based Services. **7.100.5(i)(2)(D)** will be amended as follows: "If the assessment determines the person has a developmental disability but does not meet a funding priority to receive Home and Community-Based Services funding, the notice must state that the DA will continue to offer information and referral services and will place the person's name on a waiting list (Section 7.100.5(q))."
29	**7.100.5(j)(1)(E)** says "A recipient or family may request that an agency sub-contract with a non-agency provider to provide some or all of the authorized services; however, the decision to do so is at the discretion of the agency." This language is currently in Subsection 4.10(a)(5) of the 2017 Regulations. This subsection should include language that makes it clear that an agency's consent to a family's request to have services provided through a subcontract with a non-agency provider must not be unreasonably withheld. The Regulations should be clear that if an individual or family wants services provided through a non-agency provider, then the presumption should be that the agency will enter such a subcontract, and the agency's discretion not to subcontract should only be exercised in the event that there is a reasonable basis to conclude that the sub-contractor is unable to comply with the	The denial of a beneficiary's request to obtain services from a non-agency provider outside the network, **when made by the Medicaid Program,** *is* an adverse benefit determination, to which appeal rights attach. Here, however, a DA/SSA, in refusing to subcontract with an out of network provider, is acting as a service provider, not as the Medicaid Program. In order to provide services, providers are required to be certified as specified in **7.100.11**. Any entity wanting to provide DD services can submit a request to become certified. Certification allows the Department to verify that providers meet certain standards

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	applicable programmatic requirements. Additionally, there should be clear language that if an agency refuses to enter into a contract with a non-agency provider, then the individual or Authorized Representative (e.g., parent/guardian), may appeal the refusal to subcontract to the DDSD Director. Another parent endorsed this comment.	in the provision of services. Certified providers can sub-contract with other providers, but sub-contracting is arrangement between a certified provider and the sub-contractor. The *Rules* requires that certified providers retain responsibility for their sub-contractors in following all requirements of the program. However, the Department cannot require a provider to enter into a sub-contract with another entity. No change will be made based on this comment.
30	**7.100.5(j)** A family, including a person with DD, and the Developmental Disabilities Housing Initiative commented "Eliminate the provision that a DA/SSA can refuse to subcontract with a family or recipient who desires that their authorized services be provided by a non-agency." "Currently, granting such a request is "at the discretion of the agency (DA/SSA)."	See response #29.
31	**7.100.5(j)(2)** Developmental Disabilities Housing Initiative recommends: Include and/or clarify that HCBS funding can be used for out-of-state authorized services, including housing, if the recipient's "needs are so specialized" that no provider within the recipient's geographic area can accommodate the recipient's needs.	If all other state and federal requirements are met, services may be provided by a provider outside the geographic region, but the availability of home supports is subject to Medicaid residency requirements, as outlined in HBEE Rule 21.00, et seq. See response to comments # 13 and #14. The Department recommends no changes to this subsection.
32	**7.100.5(j)(3)(A)** A parent recommends a change to the language in this section so that if an individual chooses to receive services from an agency other than the DA, or an agency agrees to subcontract with a provider, the provider shall submit a budget to the DA and the DA shall determine its costs to serve the individual, **and the individual will have the choice of which of the services they would prefer not based completely or only, on the lowest possible cost.**	See response to comment #26 related to funding of the most cost-effective option. The State maintains a Designated Agency system for the provision of DDS. The purpose of this system is to ensure that there is at least one provider of DDS in a geographic

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	The parent further notes: a. The previous rule wording does not support the individual having choices in housing because the lowest possible housing cost is the SLP, and the cost is so low that it does not provide adequate financial support for any other housing choices. b. This is particularly true for any individual needing 24/7 service and supports. c. One reason that 90% of adults receiving Home Supports are in Shared Living is because it is the least expensive to the DAs and the State. The Adult Foster Care payments to Shared Living Providers are exempt from income taxation under Section 131. Additionally, the "operations and maintenance" costs of the real estate is not the responsibility of the DAs. d. Creating new, sustainable, housing options has to recognize that the current lack of choice is directly tied to inadequate funding for DD services for decades. e. The fact that Group Living and Staffed Living are more expensive ignores the fact that they are more expensive because the people served in those models have the highest needs. They are also more expensive because both of those models operate entirely on shift-staff.	region who is required to serve eligible individuals. It was set up this way due to VT being a small rural state with a limited number of available providers. Expectations and reimbursement for those services are outlined in Provider Agreements between the State and the Designated Agencies. The Department authorizes funding for individuals based upon their assessed needs and costs associated with the Designated Agency to meet those needs. The Department is obligated to manage within the funds allocated by the legislature. Allowing a recipient to choose a higher cost service when the Designated Provider can provide it at a lower rate would not allow the Department to manage its available funds. One of the future goals of the Department, through the DDS Payment Reform project is to create uniform rates for services so that the state pays the same amount to all providers for a particular service. It is anticipated that this will allow for leveling the playing field across providers and make it easier for recipients to choose another provider outside their Designated Agency. It is acknowledged that the current structure of the system has led to Shared Living as the only home support option offered for most people who require 24 hour supports. As noted previously, the Department is committed to expanding home support options

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		as required by Act 186. No change will be made in response to this comment.
33	**7.100.5(q)** An internal DDSD staff and the DS Directors recommend that the first sentence in the introductory paragraph of this section be amended to apply only to Home and Community-based Services when the person's whole requested plan is denied because the person's needs do not meet a funding priority. The designated agency would be responsible for maintaining that waiting list.	The stated intent of the proposed changes to the **7.100.5(q)** was to streamline the information collected on the waiting list to that which is meaningful and useful. The Department agrees that the current level of detail in this section is not helpful in identifying people's unmet needs. The Department will amend this section as follows: "A person with a developmental disability whose application for Home and Community-Based Services, Flexible Family Funding or Family Managed Respite is denied must be added to a waiting list maintained by the Designated Agency. The Designated Agency must notify an applicant that his or her name has been added to the waiting list and explain the rules for periodic review of the needs of people on the waiting list. (1) The Division will provide instructions to the Designated Agencies for reporting waiting list information to the Division. (2) Each Designated Agency must notify individuals when they have been placed on a waiting list and review needs of all individuals on the waiting list, as indicated below, to see if the individual meets a funding priority, and if so, to submit a funding proposal and/or refer the individual to other resources and services. A review of the needs of all individuals on the waiting list must occur: (A) When there are changes in the funding priorities or funds available; or (B) When notified of

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		significant changes in the individual's life situation (3) Waiting list information will be included the DDS Annual Report and will be reviewed annually by the DDS State Program Standing Committee.
34	**7.100.5(q)(1)(A)** An internal DDSD staff and the DS Directors recommend not including those already receiving services from being added to the waiting list when their request for additional HCBS is denied, either in whole or in part. The rational provided in follow up to the feedback was that the annual periodic review process for people currently receiving services provides an opportunity for determining if the person's circumstances have changed or of the funding priorities have changed that would then warrant approval of additional services.	The Department agrees that there is a process for following up with individuals who are current recipients to determine if their needs have changed or whether a change in funding priorities would warrant additional funding. This process is the annual periodic review of people's needs that is required. However, it is not known whether all stakeholders would agree that the information about current recipients being denied additional funding should not be collected. That is the rationale for the annual review by the DDS State Program Standing Committee, as noted in the response to comment #33. The Department agrees to strike this section and amend section **7.100.5(q)** as noted in the response to comment #33.
35	**7.100.5(q)(1)(C)** An internal DDSD staff and the DS Directors recommend not requiring that a waiting list be maintained for people eligible for Targeted Case Management who are denied due to insufficient funds.	The Department agrees with the recommendation to not maintain a waiting list for people requesting Targeted Case Management. There have been no people on this waiting list for many years. There have been sufficient funds to meet the needs of people needing this service and there is a mechanism for providers to request additional funding if needed. The Department agrees to strike this section as noted in response to comment #33.

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36	**7.100.5(q)(1)(E)** An internal DDSD staff and the DS Directors recommend not requiring that a waiting list be maintained for people eligible for the Post-Secondary Education Initiative who are denied due to insufficient funds or lack of capacity for additional students.	The Department agrees with the recommendation to not maintain a waiting list for people requesting Post-Secondary Education Initiative services. There have been no people on this waiting list for many years. There have been sufficient funds to meet the needs of people requesting this service and there is a mechanism for providers to request additional funding if needed. The Department agrees to strike this section as noted in response to comment #33.
37	**7.100.5(q)(2)(A)** An internal DDSD staff and the DS Directors recommend not requiring individuals on the waiting list be reviewed annually, but instead only when there are changes in funding priorities or funds available or when notified a significant change in a person's circumstances.	The Department agrees that an annual review of the waiting list is not needed as the only time a different decision could be made would be if the other two criteria listed in **7.100.5(q)(2)(B) & (C)** are met. The Department agrees to strike this section and re-label **7.100.5(q)(2)(B) & (C)** to **7.100.5(q)(2)(A) & (B)** as noted in response to comment #33.
	7.100.6 Self/Family-Managed Services -general comments	
38	**7.100.6** A number of parents recommended that the prohibition on Self/Family Management of 24-hour home supports should be eliminated. One parent noted "That 8-hour limitation is an arbitrarily imposed barrier to creating alternative, sustainable housing options for individuals and families. Whatever the "problematic" situations were that led to the 8-hour limitation being imposed by a memo in 2005, and then jammed into the 2011 DD Regulations over the unanimous objection of all public commenters, are not a legitimate basis to prohibit all individuals or families from managing 24-hour Home Supports. The fact that there was a recent horrible situation of abuse and neglect in the Shared Living Provider Program does not mean the DDSD is going to ban	The Department does not agree with the recommendation to eliminate the 8 hour a day limitation on home supports for those who are self or family managing their services. However, the Department agrees to raise the limit to 12 hours of day of Home Supports in the categories of In-Home Family Supports and Supervised Living. Home Supports include the following areas: • In-home Family Supports • Supervised Living • Staffed Living • Group Living

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	all Shared Living Providers. It is the DDSD's job, and the Supportive ISO's job, to administer the Self/Family Management Program. There is a process to terminate individuals or families from the management of services. If the individuals or families are not up to the task, then those individuals or families can have their ability to manage services taken away. It should be no different when it comes to management of 24-hour services. Another parent reiterated this point indicating "The DD Regulations are currently clear: "In order to self/family-manage services, the individual or family member must be capable of fulfilling the responsibilities set forth in Section 7.100.6(b)." Because the 8-hour Home Support limitation should finally be eliminated, and the ability to manage 24-hour Home Supports should be restored as it existed before March of 2005, then the requirement in the current 2017 Regulations, Section **5.2(m)** should be reinstated ("Follow the requirements of the Housing Safety and Accessibility Review Process to ensure that the individual is living in a safe and accessible home."). Another parent endorsed this comment.	• Shared Living • Remote Supports • Home Modifications Remote Supports and Home Modifications are not hourly services, so the rule does not apply to these services. Staffed Living and Group Living are defined as services staffed by providers (see 7.100.2(bb) for definition of "provider"). As such, they cannot be self or family managed. Shared Living providers/foster families are contracted home providers and are generally compensated through a "Difficulty of Care" foster care payment. According to IRS rules (26 U.S Code §131), difficulty of care payments may be excluded from the Shared Living providers income when the person with the disability is placed in the home of the provider by a "Qualified Foster Care Placement Agency." These agencies are defined as entities that are licensed or certified by a State or political subdivision thereof, or an entity designated by a State or political subdivision thereof, for the foster care program of such State or political subdivision to make foster care payments to providers of foster care." Transition II, the Supportive ISO for individuals and families who are self/family managing, is not a designated as a Qualified Foster Care Placement Agency. Their responsibilities as a Supportive ISO does not include screening and monitoring of

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		Shared Living providers. They are not certified to provide direct services as are the DA/SSAs. The Department also believes that for the purposes of ensuring health and safety and compliance with all rules and guidelines applicable to Shared Living arrangements, placements must be made by certified providers. It is acknowledged that abuse and neglect have happened in Shared Living arrangements that are overseen by certified providers. This oversight does not prevent all incidents from occurring but provides the structure for monitoring health and safety and quality of supports. In a self/family management arrangement, there would not be an entity to provide oversight outside the family. The Department is not willing to allow for self/family management of Shared Living at this time. The Department agrees to change the rules to allow for up to 12 hours a day of In-Home Family Support and Supervised Living to be self or family managed. It should also be noted that depending on the assessed needs of the individual, other categories of service may be authorized and can be self/family managed, such as Community Supports, Employment Supports and Respite which can provide additional hours of support per day. The final sentence in the first

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		paragraph of **7.100.6** will be amended as follows: "An individual or a family member may manage up to 12 hours a day of In-home Family Supports or Supervised Living, but may not self/family manage Staffed Living, Group Living or Shared Living."
39	A family, including a person with DD, and the Developmental Disabilities Housing Initiative commented: "Self and family management only allows for 8 hours/day of paid in-home supports and we believe the state should allow for family management of 24/7 paid in-home supports."	See response to comment #38.
	7.100.6 Self/Family-Managed Services – comments by section	
	No comments by section were received.	
	7.100.7 Recipient financial Requirements	
	No comments were received.	
	7.100.8 Special Care Procedures – General comments	
	No general comments were received.	
	7.100.8 Special Care Procedures - comments by section	
	No comments by section were received.	
	7.100.9 Internal Appeals, Grievances, Notices, and State Fair Hearings - general comments	
40	Vermont Legal Aid has grave concerns about the failure to describe the process for Grievance, Internal Appeals and Fair Hearings. The HCAR regulations at 8.100 have their own difficulties in not stating a clear path for DD applicants and recipients. The HCAR rule defines how to grieve and appeal from a decision of a "Medicaid Program." A "Medicaid Program" can be DVHA, DAIL, a Designated Agency, a Specialized Agency, or a subcontractor. HCAR 8.100.2(g). The first level of appeal is the Internal Appeal. HCAR 8.100.4. In the DD context, an internal appeal may, depending on the circumstances, be an appeal to the Designated or Specialized Services Agency, to ARIS or Transitions II, or it may be a Commissioner's Review with the DAIL Commissioner or her designee. However, these terms are entirely absent from the HCAR rule, and it only refers to the Internal Appeal from the "Medicaid Program". As the HCAR rule is	The proposed language complies with the requirements of 18 V.S.A.§ 8726(a)(5), which directs the Department to adopt rules that include "[c]omplaints and appeals, including notice as required in section 8727 of this title." More specifically, the content of HCAR 8.100 fully and strictly complies with the requirements of 42 CFR Part 438, subpart F. Nothing contained therein requires, in rule, the level of specificity requested by this commenter; rather, what is required is a notice that includes an explanation of the right to request an appeal and the identification of the entity to which the request should be

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	currently written, it is often unclear to whom, among these various entities, an internal appeal must be directed. It is also unclear who are the "parties" representing the adverse decision in the internal appeal and the Fair Hearing. HCAR 8.100.4(j); 8.100.5(i). Is DAIL or the Designated Agency the one representing the position to deny, reduce or terminate? For families and individuals who self-, family- or shared-manage the appeals process becomes even cloudier. We appreciate that the Division will develop a plain language guide to grievances, internal appeals, and fair hearings. However, a plain language document can only be written after the Division has identified the process through regulations. In multiple conversations with stakeholders, agencies, and division staff, stakeholders who use these processes do not agree on how and when each of the processes should work, and that is because DAIL has not spelled it out.	directed. Notices provide the applicant or recipient instructions as to how to contact the entity responsible for hearing the internal appeal. Notices of determination issued by the entity hearing the internal appeal include, among other things, information as to how the applicant or recipient may request a fair hearing with the Human Services Board. The Department appreciates this request for the inclusion of such detail, and, as such, has offered to prepare and make available the referenced "plain language document." The Department's approach of simply incorporating (by reference) HCAR 8.100, however, will avoid the need to amend HCAR 7.100 if there are changes to 42 C.F.R. Part 438, subpart F (and, in turn, HCAR 8.100). No change to the *Rule* is being made in response to this comment.
41	A parent indicated that she did not know what the appeal information means and that it is confusing. She recommended that plain language information regarding filing grievances and appeals is important and needed for individuals and families. She noted that there is a lag time with providers disseminating information and that even the agencies do not fully understand the rules.	The Department is currently in the process of developing a plain language guide for filing grievances and appeals. The proposed *Rules* would require this information to be provided to applicants, recipients and their authorized representatives in plain language at initial intake, whenever decisions are made regarding services, and at least annually. See also response to comment #41.
	7.100.9 Internal Appeals, Grievances, Notices, and State Fair Hearings – comments by section	
	No comments by section were received.	
	7.100.10 Training – general comments	
42	Vermont Developmental Disabilities Council	The proposed *Rule* includes

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	recommends that "the training section can be amended so that …..employees and contractors receive training on formal and informal methods of supported decision making and serving as supporters in a more formal supported decision-making agreement if they so choose."	reference to supported decision making in pre-service (**7.100.10(d)(4)(E)**) and in-service (**7.100.10(e)(1)(B)**) training. The other training areas listed in **7.100.10** reference broad areas and do not provide details regarding the content of that training. The Department does not believe this level of detail is appropriate in *Rule.* This allows for training on a subject to evolve with changing best practice without the necessity of changing the *Rule*. No further changes will be made based on this comment.
43	VT Developmental Disabilities Council recommends that knowledge of Person-centered planning and settings rules requirements be added to training requirements.	The Department agrees with this recommendation and as noted in comment #25, agrees to add to **7.100.10(d)(4)(A)**, which relates to pre-service training of workers as follows: "Individual rights, as specified in 18 V.S.A. §8728 and as outlined in the federal CMS HCBS rules:" The CMS HCBS rules include requirements regarding services settings and person-centered planning.
	7.100.10. Training – comments by section	
44	**7.100.10(e)(1)(B)** Vermont Legal Aid appreciates the inclusion of language for in-service training in supporting communication and decision-making.	The Department appreciates the positive feedback.
45	**7.100.10(d)(3)(D)** Vermont Communication Task Force recommended that this section be amended as follows: "Methods of communication used by the individual including tools, technology, and effective partner support strategies"	This feedback had been provided prior to filing the current draft and had previously been incorporated into the current proposed *Rule*.
46	**7.100.10(d)(4)** Vermont Communication Task Force recommended adding the following to the list of values for pre-service training of workers "Presumption of Competence: a strength-based	The Department agrees with this recommendation. **7.100.10(d)(4)(F)** will be added as follows:

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	approach that assumes all people have abilities to learn, think, and understand."	"(F) Presumption of Competence: a strength-based approach that assumes all people have abilities to learn, think, and understand."
47	**7.100.10(e)(1)** Vermont Communication Task Force recommended that "contractor" be added to the list of employers of record who are responsible for providing or arranging for in-service training.	The Department agrees with this addition. The third sentence in **7.100.10(e)(1)** and the second sentence in **7.100.10(d)** will be amended to include "contractor" in the list of employers of record: "The employer of record, whether recipient, family, shared living provider, contractor or agency, is responsible for providing or arranging for this training for their workers."
48	**7.100.10(e)(1)(B)** Vermont Communication Task Force recommended the first sentence of this section be amended as follows: The skills necessary to implement the recipient's ISA (including facilitating inclusion, teaching and supporting new skills, being an effective communication partner to support methods of communication used by the recipient).	The Department agrees with this recommendation. The first sentence in **7.100.10(e)(1)(B)** will be amended to read: "The skills necessary to implement the recipient's ISA (including facilitating inclusion, teaching and supporting new skills, being an effective communication partner to support methods of communication used by the recipient, and supporting decision making)."
	7.100.11 Certification of Providers – general comments	
	No general comments were received.	
	7.100.11 Certification of Providers –comments by section	
49	**7.100.11(e)(2)** Vermont Developmental Disabilities Council recommends "The certification section can be amended so that the guidelines for quality review incorporate adoption of supported decision-making approaches, and providers report on how supported decision making is incorporated into ISAs, and how many beneficiaries served are using some form of supported decision making, just as ISAs reflect supervision needs and communication	The Department disagrees with this recommendation. The proposed rule in this section has been amended to include receiving "support in decision making, when needed." The details regarding how providers are meeting the quality standards are included in the

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	support.	*Guidelines for the Quality Review Process of Developmental Disabilities Services.* These guidelines, rather than the *Rule,* would be the place to incorporate those details. What providers are required to report to the Department is outlined in the Provider Agreements between the Departments and Providers. As what is meaningful and useful data evolves over time, it is not included in *Rules.* The Department agrees with the recommendation that ISAs include a section related to support around decision making, however, this should be included in an update of the *Individual Support Agreement Guidelines* rather than in this *Rule*. The Department will consider how to incorporate supporting decision making in the next revision of the ISA Guidelines. No changes to the *Rules* are being made based on this comment.
50	**7.100.11(e)(2).** Vermont Legal Aid is glad to see that certification quality standards include that individuals receiving services will "receive support in decision-making when needed".	The Department appreciates the positive feedback.
51	**7.100.11(e)(2).** The Committee on Guardianship and Supported Decision Making recommended that the principles of supported decision making be incorporated into the Quality Standards for Services for certified providers.	Department has added language to **7.100.11(e)(2)** to include supported decision making in the proposed *Rule*. The Department does not believe that the details regarding the principles of supported decision making should be delineated in this section of the *Rule.* As noted in the response to comment #49, these details are more appropriate for the

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		Guidelines for the Quality Review Process of Developmental Disabilities Services rather than the *Rule.* In addition, supported decision making is included in the proposed *Rule* in the required pre-service training of workers (**7.100.10(d)(4)(e)**) and in-service training (**7.100.10(e)(1)(B).** The principles would appropriately be incorporated into these trainings on supported decision making. No further changes to the rule are being made in response to this comment.
52	**7.100.11(f)(1)** A parent said to see his comment related to 7.100.5(j) (#29 above). He noted that **7.100.11(f)(1)** should mirror his recommendation regarding subsection **7.100.5(j)** and be made clear that there is a presumption that the agency will enter a subcontract with a non-designated organization, and the discretion not to subcontract with a non-designated organization will only be exercised if there is a reasonable basis to conclude that the subcontractor is unable to comply with the applicable programmatic requirements. Another parent endorsed this comment.	See response to comment #29. No change will be made in response to this comment.
	7.100.12 Evaluation and Assessment of the Success of Programs – general comments	
53	The Vermont Developmental Disabilities Council recommends "Quality reviews and monitoring of compliance with HCBS rules should be increased to significantly more than a 15% review every 2 years and set out in the Rules."	The Department disagrees with this recommendation. Section 7.100.12(a) specifies that providers will be reviewed according to the *Guidelines for Quality Review Process for Developmental Disabilities Services*. That document spells out the frequency and percentage of people to be reviewed. The frequency and percentage are based upon what can be reasonably done with the existing staffing resources in the Division. While the Department

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		recognizes the benefit of expanding the frequency and percentage of those reviewed, doing so would require additional resources which is legislative budget issue. The Department cannot commit in the *Rule* to activities for which we do not have identified resources. Act 186, which was passed in most recent legislative session requires the Department to provide a report to the legislature regarding resources needed to expand the frequency of quality reviews of providers. This issue will be considered in the Legislature. If additional resources become available, the Department will modify the frequency and percentages identified in the *Guidelines for Quality Review Process for Developmental Disabilities Services.* No change in the *Rule* will be made in response to this recommendation.
	7.100.12 Evaluation and Assessment of the Success of Programs – comments by section	
	No comments by section were received.	