

This book is dedicated with gratitude to Barbara Winters (CBIST) for her many years of compassionate and professional service to survivors of brain injury and their families as well as for her strong commitment to increasing the level of brain injury care in Vermont.

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CHAPTER ONE:

BRAIN INJURY GENERAL INFORMATION

An acquired brain injury (ABI) is an injury to the brain that is not hereditary, congenital, degenerative, or induced by birth trauma. Essentially, this type of brain injury is one that has occurred after birth. The injury results in a change to the brain's neuronal activity, which affects the physical integrity, metabolic activity, or functional ability of nerve cells in the brain.

There are two types of acquired brain injury: traumatic and non-traumatic.

A traumatic brain injury (TBI) is defined as an alteration in brain function, or other evidence of brain pathology, caused by an external force. Traumatic impact injuries can be defined as closed (or non-penetrating) or open (penetrating). Causes of TBI include:

- Falls
- Assaults
- Motor Vehicle Accidents
- Sports/Recreation Injuries
- Abusive Head Trauma (Shaken Baby Syndrome)
- Gunshot Wounds
- Workplace Injuries
- Child Abuse
- Domestic Violence
- Military Actions (Blast Injury)

A non-traumatic brain injury is an alteration in brain function or pathology caused by an internal force. Examples of non-traumatic brain injuries include:

- Stroke (Hemorrhage, Blood Clot)
- Infectious Disease (Meningitis, Encephalitis)
- Seizure
- Electric Shock
- Tumors
- Toxic Exposure

- Metabolic Disorders
- Neurotoxic Poisoning (Carbon Monoxide, Lead Exposure)
- Lack of Oxygen (Drowning, Choking, Hypoxic/Anoxic Injury)
- Drug Overdose

THE PROBLEM

Brain Injuries contribute to a substantial number of deaths and cases of permanent disability annually. In 2014, an average of 155 people in the United States died each day from injuries that include a TBI. The Centers for Disease Control (CDC) tracks TBI in the emergency department (ED) and hospital settings only and does not report on non-traumatic brain injuries. The number of individuals with a TBI not seen in the ED or received care in other setting or received no care is unknown. This means that there are many more individuals living with brain injuries that are not included in the CDC numbers.

TBIs are diagnosed as Mild, Moderate or Severe. This descriptor is used to describe the level of initial injury in relation to the neurological severity caused to the brain. There may be no correlation between the initial level of brain injury and the individual's short or long term recovery, or functional abilities. Keep in mind any injury to the brain is serious and the term "mild" does not mean that there are no neurological deficits.

In the United States in 2014, approximately 2.87 million ED visits, hospitalizations, or deaths were associated with TBI-either alone or in combination with other injuries. Of those 56,800 died and 280,800 were hospitalized. TBI was the diagnosis in 2.5 million ED visits, either alone or in combination with other injuries. In 2014, an estimated 812,000 children (age 17 or younger) were treated in U.S. EDs for concussion or TBI, alone or in combination with other injuries¹.

¹Centers for Disease Control and Prevention (2019). Surveillance Report of Traumatic Brain Injury-related Emergency Department Visits, Hospitalizations, and Deaths—United States, 2014. Centers for Disease Control and Prevention, U.S. Department of Health and Human Services

In 2012, approximately 430,000 ED visits resulted from sports and recreation-related mTBI.⁴ Nearly 70% of those ED visits (325,000) were among those 0-19 years of age².

Concussion, also called mild TBI (mTBI) is common in organized scholastic and non-scholastic sport, non-traditional recreational activity (eg, extreme, individual), and routine activities of daily living. A recent report using data from emergency room visits, office visits and a high school injury surveillance system estimated 1.0–1.8 million SRCs per year in the 0–18 years age range and a subset of about 400 000 SRCs in high school athletes³. Concussion is a problem of brain function, as opposed to structure – meaning that a concussion by itself cannot be seen as medical diagnostic tools such as cat scans (CTs) or MRIs. It is primarily diagnosed by symptoms.

SYMPTOMS

Because the brain is complex, every brain injury is different. Some symptoms may appear right away. Other symptoms may not show up for days or weeks. Sometimes the injury makes it hard for people to recognize or admit that they are having problems.

The signs and symptoms of a concussion can be subtle. Early on, problems may be missed by patients, family members, and doctors. People may look fine even though they may act or feel differently.

Possible symptoms of concussion:

- Headaches or neck pain that won't go away;

² Coronado VG, Haileyesus T, Cheng TA, et al. Trends in sports- and recreation-related traumatic brain injuries treated in US emergency departments: The National Electronic Injury Surveillance System-All Injury Program (NEISS-AIP) 2001-2012. The Journal Of Head Trauma Rehabilitation. 2015;30(3):185-197.

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³ Consensus Statement – American Medical Society for Sports Medicine 2019

- Difficulty with mental tasks such as remembering, concentrating, or slowness in thinking, speaking, acting, or reading;
- Getting lost or easily confused;
- Feeling tired all of the time, having no energy or motivation;
- Mood changes (feeling sad or angry for no reason);
- Changes in sleep patterns (sleeping a lot more or having a hard time sleeping)
- Light-headedness, dizziness, or loss of balance;
- Urge to vomit (nausea);
- Increased sensitivity to lights, sounds, or distractions;
- Blurred vision or eyes that tire easily;
- Loss of sense of smell or taste; and
- Ringing in the ears.

Children with a brain injury can have the same symptoms as adults. But it is harder for them to let others know how they feel. Call your child's doctor if your child has had a blow to the head and you notice any of these symptoms:

- Tiredness or listlessness;
- Irritability or crankiness (will not stop crying or cannot be consoled);
- Changes in eating (will not eat or nurse);
- Changes in sleep patterns;
- Changes in the way the child plays;
- Changes in performance at school;
- Lack of interest in favorite toys or activities;
- Loss of new skills, such as toilet training;
- Loss of balance or unsteady walking; or
- Vomiting.

CONSEQUENCES

- TBI may cause problems with
 - *Cognition (concentration, memory, judgment, and mood).
 - *Movement abilities (strength, coordination, and balance).

*Sensation (tactile sensation and special senses such as vision).

*Emotion (instability and impulsivity). (Thurman et al. 1999)

•Repeated mild brain injuries occurring over an extended period of time (i.e., months, years) can result in cumulative neurological and cognitive deficits. Repeated mild brain injuries occurring within a short period of time (i.e., hours, days, or weeks) can be catastrophic or fatal (CDC 1997).

•At least 5.3 million Americans - 2% of the U.S. population - currently live with disabilities resulting from TBI (Thurman et al.1999). *

*(This estimate is based on the number of people hospitalized with TBI each year and does not include people seen in Emergency Departments who were not admitted to the hospital, those seen in private doctor's offices, and those who do not receive medical care.)

•An estimated 15% of persons who sustain a mild brain injury continue to experience negative consequences one year after injury (Guerrero et al p. 2000).

•TBI can cause seizure disorders such as epilepsy (Hauser et al 1993). The following general tips can aid in recovery:

*Get lots of rest. Don't rush back to daily activities such as work or school.

*Avoid doing anything that could cause another blow or jolt to the head.

*Ask your doctor when it's safe to drive a car, ride a bike, or use heavy equipment because your ability to react may be slower after a brain injury.

*Take only the drugs your doctor has approved, and don't drink alcohol until your doctor says it's OK.

*Write things down if you have a hard time remembering.

*If your brain injury was severe, you may need therapy to learn skills that were lost, such as speaking, walking, or reading. Your doctor can help arrange rehabilitation services. (CDC 1999).

CAUSES OF TBI – CDC DATA

- In 2014⁴, falls were the leading cause of TBI. Falls accounted for almost half (48%) of all TBI-related emergency department visits. Falls disproportionately affect children and older adults:

- * Almost half (49%) of TBI-related ED visits among children 0 to 17 years were caused by falls.

- * Four in five (81%) TBI-related ED visits in older adults aged 65 years and older were caused by falls

- Being struck by or against an object was the second leading cause of TBI-related ED visits, accounting for about 17% of all TBI-related ED visits in the United States in 2014.
- Over 1 in 4 (28%) TBI-related ED visits in children less than 17 years of age or less were caused by being struck by or against an object.
- Falls and motor vehicle crashes were the first and second leading causes of all TBI-related hospitalizations (52% and 20%, respectively).
- Intentional self-harm was the first leading cause of TBI-related deaths (33%) in 2014

COST

According to the Brain Injury Association of America (BIAA), at least 5.3 million Americans live with a disability related to a traumatic brain injury (TBI) and with 280,000 attributable hospitalizations and 2.2 million emergency room treatments, the economic cost exceeds \$82 billion annually.

GROUPS AT RISK

- Males are about 1.5 times as likely as females to sustain a TBI (CDC 1997).
- The two age groups at highest risk for TBI are 0-4 year olds and 15 to 19 year olds.
- African Americans have the highest death rate from TBI (Thurman et al 1999).
- Certain military duties have the highest death rate from TBI.

⁴ Centers for Disease Control and Prevention (2019). Surveillance Report of Traumatic Brain Injury-related Emergency Department Visits, Hospitalizations, and Deaths—United States, 2014. Centers for Disease Control and Prevention, U.S. Department of Health and Human Service

GENERAL PATTERNS OF DYSFUNCTION BY LOCATION OF INJURY

| <i>•Right Side Of Brain</i> | <i>•Left Side Of Brain</i> | <i>•Diffuse Injury</i> |
|--|--|--|
| •Impairments in visual spatial perception | •Difficulties in understanding language (receptive language) | •Reduced thinking speed |
| •Leftneglect, or inattention to the left side of space or body | •Difficulties in speaking or verbal output (expressive language) | •Increased Confusion |
| •Decreased awareness of deficits | •Catastrophic reactions (depression, anxiety) | •Reduced attention and concentration |
| •Altered creativity and music perception | •Verbal memory deficits | •Increased fatigue |
| •Loss of the gestalt, or “big picture” | •Decreased control over right sided movements | •Impaired cognitive functions across all areas |
| •Visual memory deficits | •Impaired Logic | |
| •Decreased control over left sided movements | •Sequencing Difficulties | |

POSSIBLE CHANGES AFTER A BRAIN INJURY

•Thinking changes

- Memory
- Decision making
- Planning
- Sequencing
- Judgment
- Processing Speed
- Problem solving differences
- Persistence

- Organization
- Self-perception
- Perception
- Physical Changes
 - Motor coordination
 - Hearing and visual changes
 - Spasticity and tremors
 - Fatigue and/or weakness
 - Taste and smell
- Personality and behavioral changes
 - Depression
 - Social Skills problems
 - Mood swings
 - Problems with emotional control
 - Inappropriate behavior
 - Inability to inhibit remarks
 - Lack of response to social cues
- Inflexibility
- Thinking
- Balance
- Mobility
- Speech
- Seizures
- Problems with initiation
- Reduced self-esteem
- Difficulty in relating to others
- Difficulty maintaining relationships
- Difficulty forming new relationships
- Stress, anxiety & frustration

PREVENTION

There are many ways to reduce the chances of brain injury. CDC and the Brain Injury Association of America offer these tips:

- Wear a seat belt every time you drive or ride in a motor vehicle.
- Always buckle your child into a child safety seat, booster seat, or seatbelt (according to the child's height, weight, and age) in the car.
- Never drive while under the influence of alcohol or drugs.
- Wear a helmet and make sure your children wear helmets when

*Riding a bike, motorcycle, snowmobile, scooter, or all-terrain vehicle;

- *Playing a contact sport, such as football, ice hockey, or boxing;
 - *Using in-line skates or riding a skateboard;
 - *Batting and running bases in baseball or softball;
 - *Riding a horse; or
 - *Skiing or snowboarding.
- Avoid falls in the home by
 - *Using a step stool with a grab bar to reach objects on high shelves;
 - *Installing handrails on stairways;
 - *Installing window guards to keep young children from falling out of open windows;
 - *Using safety gates at the top and bottom of stairs when young children are around;
 - *Removing tripping hazards such as small area rugs and loose electrical cords;
 - *Using non-slip mats in the bathtub and on shower floors;
 - *Putting grab bars next to the toilet and in the tub or shower;
 - *Maintaining a regular exercise program to improve strength, balance, and coordination;
 - *Seeing an eye doctor regularly for a vision check to help lower the risk of falling;
 - *Make sure the surface on your child's playground is made of shock-absorbing material, such as hardwood, mulch, and sand; and
 - *Keep firearms stored unloaded in a locked cabinet or safe. Store bullets in a separate secured location.

There are many opportunities to raise awareness in your community about the causes and consequences of TBI. Below are some times of the year that may be appropriate for drawing attention to a particular issue:

- March is Brain Injury Awareness Month.
- December is National Drunk and Drugged Driving Prevention Month.
- The week of Valentine's Day is National Child Passenger Safety Week.
- The fourth week of April is National Playground Safety Week.

Schools are a great place to incorporate prevention efforts. The National SAFE KIDS Campaign Web site and the National Program for Playground Safety Web site have teacher plans and student handouts about motor vehicle, sports and recreation, and playground safety.

National SAFE KIDS Campaign: www.safekids.org

National Program for Playground Safety: www.uni.edu/playground/

RESOURCES

Brain Injury Association of Vermont

1-877-856-1772

www.biavt.org

Brain Injury Association of America

703-761-0750

www.biausa.org

Disability Rights Vermont

1-800-834-7890

www.disabilityrightsvt.org

Department of Disabilities, Aging and Independent Living (DAIL)

Adult Services Division

Traumatic Brain Injury Program

Phone: (802) 241-0294

Web: <https://asd.vermont.gov/>

Centers for Disease Control and Prevention (CDC) National Center for Injury Prevention and Control

1-800-232-4636

www.cdc.gov/ncipc/tbi

Vermont Legal Aid / Disability Law Project

www.vtlegalaid.org

Vermont Legal Aid – Burlington

Statewide Helpline: 1-800-889-2047

Office Phone: 1-800-747-5022

Fax: 802-863-7152

264 North Winooski Avenue

Burlington, VT 05401

Vermont Legal Aid – Montpelier

Statewide Helpline: 1-800-889-2047

Office Phone: 1-800-789-4195

Fax: 802-223-7281

56 College Street

Montpelier, VT 05602

Vermont Legal Aid – Rutland

Statewide Helpline: 1-800-889-2047

Office Phone: 1-800-769-7459

Fax: 802-775-0022

57 North Main Street, Suite 2

Rutland, VT 05701

Vermont Legal Aid – Springfield

Statewide Helpline: 1-800-889-2047

Office Phone: 1-800-769-9164

Fax: 802-885-5754

56 Main Street, Suite 301

Springfield, VT 05156

Vermont Legal Aid – St. Johnsbury

Statewide Helpline: 1-800-889-2047

Office Phone: 1-800-769-6728

Fax: 802-748-4610

177 Western Avenue, Suite 1

St. Johnsbury, VT 05819

RESOURCES FOR VETERANS

Vermont State Office of Veteran Affairs

Veterans Affairs (VA) Services

White River Junction 802-296-5177 or
1-800-827-1000 (in Vermont)

Vermont Veterans Centers

South Burlington 802-862-1806

White River Junction 802-295-2908

Defense and Veterans Brain Injury Center

1-800-870-9244

www.dvbic.org

1-888-666-9844 /802-828-3379

Vermont National Guard Colchester

802-338-3174 www.vtguard.com

Vermont Military, Family & Community

Network 1-888-607-8773

www.ngfamily.vt.gov/

CHAPTER TWO: ABUSE AND NEGLECT

People with disabilities living in the United States are 4 to 10 times more likely to be the victims of abuse, neglect or exploitation than people without disabilities, according to the Centers for Disease Control and Prevention (CDC). This includes survivors of traumatic brain injury.

Persons with traumatic brain injury are at risk for becoming victims of abuse, neglect and exploitation because their injury can make it difficult for them to recognize or avoid unsafe situations. They also may not be able to control their temper or they may use language that causes others to become angry. TBI survivors may have substance abuse problems, depression or post traumatic stress disorder which could make it more difficult to protect themselves from victimization.

Abuse, neglect or exploitation can be perpetrated by family members, caregivers, or other people who have access to a person with a TBI. Often, these are the people who are closest to the victim. It can be very hard for the person with a TBI to report abuse. The person may be afraid to hurt a family member, or may be afraid of losing the person who provides daily care. The person with a TBI may also not be able to recognize that a situation is abusive. The person may also not be able to communicate what is going on, or may not know how to report it.

Abuse, neglect and exploitation are not just physical. A person who insults or harasses a person because of their disability or knowing that the insults or harassment will harm the person with a disability can be guilty of mental abuse as well. Many persons with disabilities are victims of financial abuse, where a family member, caregiver or stranger takes the person's money or property and uses for things other than what the person with the disability wants or needs.

Who is a “vulnerable adult”?

It is against the law to abuse, neglect or exploit a vulnerable adult. “Vulnerable adults” are persons over 18 who have a disability that limits their ability to care for themselves or protect themselves against abuse, neglect or exploitation. It includes both people living in institutions and those living in the community.

What is abuse?

Abuse of a vulnerable adult means:

- Any act that puts the physical or mental health or safety of a vulnerable individual in danger.
- Any act (intentional or reckless) that is likely to cause unnecessary harm, pain or suffering to a vulnerable adult, including giving drugs for non-medical purposes.
- Unnecessary confinement or restraint of a vulnerable adult.
- Any intentional act that is likely to cause fear, intimidation, humiliation, or other emotional distress to a vulnerable adult.
- Any sexual activity between a vulnerable adult and a caregiver employed by a residential or non-residential facility or program is abuse, or any non-consensual sexual activity with any other caregiver.

What is neglect?

Neglect of a vulnerable adult means:

- Any intentional failure to provide a vulnerable adult with personal care, daily needs such as food, shelter, or medical care.
- Failure to report significant changes in the health and welfare of a vulnerable adult.
- Failure to protect a vulnerable adult from victimization by others.

What is exploitation?

Exploitation of a vulnerable adult means:

- Intentional misuse or taking of a vulnerable adult’s money or other assets.
- Requiring a vulnerable adult to perform work for the profit or advantage of another.
- Forcing unwanted sex on a vulnerable adult.

Are there other types of abuse?

Besides unlawful abuse of vulnerable adults, there are other kinds of unlawful abuse. These include:

- Domestic violence: While domestic violence is a problem for all populations, vulnerable adults may be less able to defend themselves against domestic violence, and have a harder time reporting the problem.
- Harassment in housing or employment: Vulnerable adults may be subject to harassment or discrimination in housing or employment because of their disability. This includes harassment from neighbors or co-workers. This kind of harassment may be unlawful discrimination.
- Abuse of children: Children with disabilities are also vulnerable to abuse, neglect and exploitation by family and caregivers.

Who has to report abuse, neglect or exploitation?

Certain people are required to report any suspected abuse, neglect or exploitation. These include state employees who work with persons with disabilities, doctors and other medical professionals, teachers and other school employees, employees of nursing homes and home health agencies; mental health workers and social workers, and others in similar positions. Anyone else who is interested in the health or safety of a person with a disability may also report abuse, neglect or exploitation.

Who should I call?

If you suspect that abuse, neglect or exploitation is going on, you can report it to the following agencies:

- For abuse, neglect or exploitation of a vulnerable adult, report the problem to Adult Protective Services at 1-800-564-1612.
- For abuse, neglect or exploitation of children, report the problem to the Department for Children and Families at 1-800-649-5285.
- For abuse by a professional caregiver, you can also report the problem to the agency that employs the caregiver, or to the local Area Agency on Aging.

- If an emergency exists, dial 911.
- If there is criminal activity involved, call the police.
- If domestic violence or sexual assault is involved, call one of the domestic violence and sexual assault resources listed below.
- For harassment and discrimination in housing or public services, call the Vermont Human Rights Commission at 1-800-416-2010.
- For harassment and discrimination in employment, call the Vermont Attorney General’s Office, Civil Rights Division at 1-802-828-3657, or at 888-745-9195 (toll free VT).

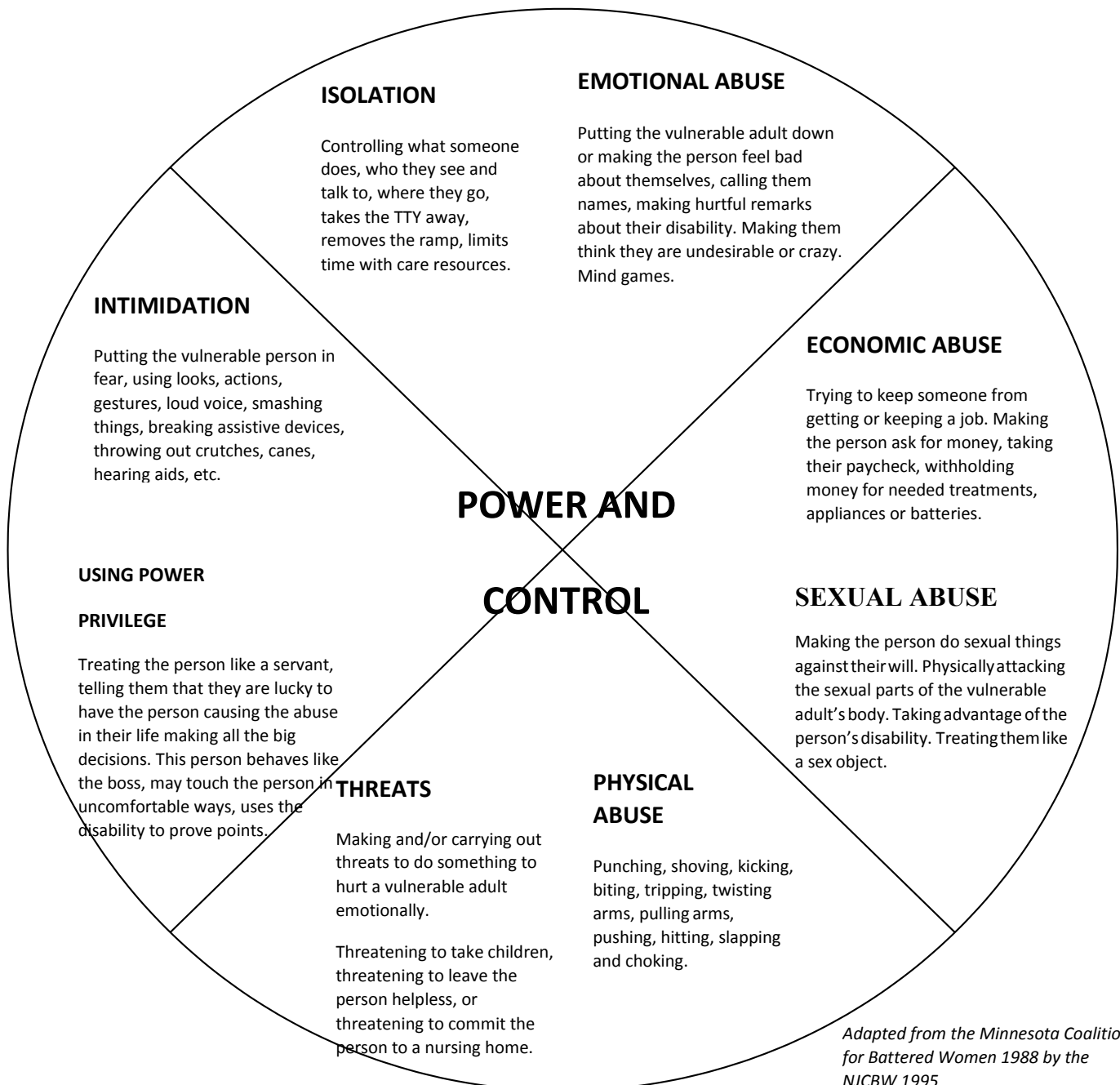
How else can I help?

- Be supportive and encourage the person to develop a safety plan and talk to the service providers who can help them.
- Assist the person with filing a Relief From Abuse Order for vulnerable adults, under 33 VSA, Chapter 69, at the Family Court. You can call the local domestic violence program to request an advocate to help with the process.
- Help the person obtain the services of a professional advocate or attorney.

RESOURCES

- Adult Protective Services 1-800-564-1612
- Department for Children and Families 1-800-649-5285
- Local Domestic Violence Programs 1-877-543-9498
- Local Sexual Assault Programs 1-800-489-7273
- Vermont Network Against Domestic Violence and Sexual Assault 1-802-223-1302
- Disability Law Project 1-800-889-2047
- Disability Rights Vermont 1-800-834-7890

This Power and Control Wheel identifies the most common tactics used by abusers to control vulnerable adults with disabilities. At the hub of the wheel, the center, is the intention of all the tactics-to establish power and control. Each spoke of the wheel represents a particular tactic (economic abuse, emotional abuse, isolation, etc.) Physical abuse is used as the ultimate control tactic when the others do not yield the desired result--control.



CHAPTER THREE:

HEALTH CARE PROGRAMS AND SERVICES

MEDICAID

What is Medicaid?

Medicaid is a joint federal and state program that provides payment for medical services.

Who gets Medicaid?

Medicaid is primarily for low income families, senior citizens 65 and older and individuals with disabilities. You may be eligible if:

- You are 65 or older
- You are legally blind
- You have a disability and can't work for at least a year
- You are under 21
- You are pregnant
- You are the parent or caretaker of a child under 18.
- You are a working person with a disability

You are almost always eligible for Medicaid if you get help from:

- Reach Up (also called TANF)
- SSI/AABD (Supplemental Security Income/Aid to the Aged, Blind or Disabled)

How do I find out if I am eligible for Medicaid?

Medicaid is one of the public health care programs that is part of Green Mountain Care. Call 1-800-250-8427 (Health Access Member Services for Green Mountain Care) for an application. (TTY 1-888-834-7898). You can also get an application at any local Department for Children and Families (DCF) office or from the Green Mountain Care Web Site at www.greenmountaincare.org. A list of DCF offices is found at the end of this chapter. If you are a senior and need help applying, you can call the Area Office on Aging at 1-800-642-5119.

How long will it take to find out whether my application is approved?

Within 30 days if eligibility is based on income and up to (90) days if eligibility is based on disability.

What if I need to see a doctor or go to the hospital while the application is pending?

If the application is approved, then Medicaid will pay for all medically necessary health care you received as far back as 3 months prior to filing the application.

Can I own my own home and still be eligible for Medicaid?

Yes. A homestead is not considered a resource for purposes of Medicaid. Other resources that Medicaid does not look at include:

- a burial site and burial funds
- clothing and personal effects
- household furniture and appliances
- tools and equipment necessary for employment
- most vehicles

What resources does Medicaid consider when determining eligibility?

- cash on hand
- bank accounts
- stocks and bonds
- IRA's
- Property that is not part of the homestead
- Certificates of Deposit
- cash value of life insurance policies

Will I need to prove my citizenship to get Medicaid?

All Medicaid recipients must be United States citizens or qualified aliens. New federal and state regulations require most applicants and recipients to verify their citizenship. The state of Vermont will be able to establish citizenship and identity for most applicants by checking with various data sources such as the Social Security Administration, health department birth records and Department of Motor Vehicle records.

Individuals whose citizenship cannot be verified through these sources will need to provide documents such as driver's licenses and certified copies of birth certificates. Health Access Member Services at 1-800-250-8427 will help people with the citizenship verification process and the state will provide financial assistance for people who are not able to pay for the necessary documents.

How do I appeal a Medicaid decision?

Applicants for Medicaid must be given written notice of the decision on their application. Medicaid recipients must be given written notice when Medicaid benefits are being terminated or reduced or when prior authorization of a medical service is denied. The written notice must include:

- A statement of what action the agency intends to take;
- When it intends to take the action;
- The reasons for the intended action;
- The policy citations that support the action;
- An explanation of the individual's right to appeal the decision;
- An explanation of circumstances under which Medicaid is continued if a hearing is requested.

Adverse decisions about Medicaid eligibility or benefits can be appealed in two ways. All decisions, including decisions that the person is not eligible for Medicaid or denial of requested services, can be appealed through the fair hearing process of the Human Services Board. A person may also appeal if s/he thinks the agency is taking too long to make a decision. The Agency of Human Services is required to respond to any indication that an individual is not satisfied with a decision by helping the person file a fair hearing request. Decisions that deny or limit the type of medical services a person on Medicaid receives can be appealed either through the fair hearing process or through an internal appeal process followed by the fair hearing process. Both appeals processes are described here.

How do I file a request for fair hearing?

Requests for fair hearing must be made within 90 days of the date the adverse decision was mailed.

Appeals can be made either orally or in writing to the worker who made the decision or directly to the Human Services Board:

Human Services Board
14-16 Baldwin Street, 2nd Floor
Montpelier, VT 05620
Phone: 828-2536
Fax: 828-3068

A request for fair hearing should include the following information:

- The name, social security number, and address of the person appealing;
- The reason why the decision is being appealed (e.g. I am appealing the denial of these services because they are medically necessary);
- The action requested of the Human Services Board (e.g. reverse the decision of OVHA and allow/continue my services).

Can my Medicaid benefits continue while I am appealing a decision?

If an individual is already receiving Medicaid benefits and wants the benefits to continue until the appeal is resolved, he or she must file a fair hearing request before the date the adverse action is to take place. For example, if a Medicaid recipient is mailed a notice on January 1 stating that benefits will terminate on January 10, the recipient must file a request for fair hearing before January 10 if he/she wants the benefits to continue until the appeal is resolved. The request for appeal must state that the recipient is requesting continuing benefits until the appeal is resolved. As a rule of thumb, request a fair hearing as soon as possible to protect continuing benefits and appeal rights. You can always change your mind later and withdraw the request.

What is the fair hearing process?

Fair hearings are held at frequent intervals (approximately once a month) at the local offices of DCF. Transportation expenses are available to individuals who need to travel outside their town of residence for the hearing.

The hearings are conducted by independent hearing officers who are state employees but who do not work for the Agency of Human Services. The hearing officer listens to testimony, reviews other evidence, and discusses legal issues involved in the appeal. The state is represented at the hearing by an attorney from the Attorney General's office. The applicant/beneficiary has the following rights at a fair hearing:

- The right to review documents and records used by OVHA or DCF to make its decision;
- The right to obtain legal representation or be represented or supported by a friend, relative or advocate;
- The right to present evidence, including witnesses, to support his/her case;
- The right to question OVHA or DCF's witnesses including employees who made the decision;
- If the appeal involves a medical issue, the individual may obtain a medical evaluation at OVHA's or DCF's expense.

Requests for assistance from an attorney or other advocate should be made as soon as possible after the appeal is filed, even before the hearing date is known. Sometimes Vermont Legal Aid can provide free legal representation for individuals at fair hearings. A list of Vermont Legal Aid Offices can be found at the end of this chapter.

The individual and OVHA or DCF may agree to postpone the hearing in order for OVHA or DCF to consider updated medical evidence. In some cases, this medical re-assessment based on new or additional information leads OVHA/DCF to reverse its decision before the fair hearing. Advocacy efforts at this stage, such as collecting information from medical sources (doctors, therapists, nurses, etc.) and from non-medical sources (care providers, teachers, vocational rehabilitation workers, etc.), can often be extremely effective in resolving the case before the fair hearing is held.

After the hearing and any written arguments, the Human Service Board (HSB) hearing officer issues a recommended decision. The HSB meets at regular intervals to review recommended decisions. It is possible for the applicant/beneficiary or his/her representative to make a brief oral argument as to why the hearing officer's decision should be followed or overruled by the Board. The Board then votes to affirm or change the hearing officer's decision. The Board can also refer the case back to the hearing officer for further evidence.

How do I file an internal appeal?

Decisions by the Managed Care Organization (MCO) of the Office of Vermont Health Access to deny or limit services for a person on Medicaid can be appealed through the internal appeals process as well as the fair hearing process.

The request for an internal appeal must be made orally or in writing within 90 days of the date of the adverse action.

The written appeal should be sent to:

Health Access Member Services

Office of Vermont Health Access

101 Cherry Street, Suite 320

Burlington, VT 05401

How does the internal appeal process work?

A meeting will be held to consider the appeal and a written decision will be sent within 45 days of filing the appeal unless an extension of time is requested by the Medicaid beneficiary. The beneficiary appealing the decision, the beneficiary's appointed representative and the beneficiary's treatment provider have the right to participate in the meeting in person, by phone, or in writing.

If the beneficiary requests it, the MCO must supply all the information relevant to the appeals process and all relevant procedures and regulations and all relevant medical records. There is no charge for copies of these records.

The person who hears the appeal is a different person than the person who made the decision but who is still part of the MCO.

The appeals reviewer must send a written decision. If the beneficiary is not satisfied with the result, s/he can also use the fair hearing process. The fair hearing can be requested at the same time as the internal appeal or after it. As a rule of thumb it is faster to file the fair hearing request at the same time as the internal appeal to speed up the process and make sure the appeal is in time.

What if I have an emergency need for a medical service and my request for Medicaid coverage is denied?

In an emergency situation where waiting for the regular internal appeal process could seriously jeopardize the beneficiary's health, the beneficiary can request an expedited appeal. It can be filed orally or in writing. The phone number and address are those listed for the regular internal appeal.

If the MCO/OVHA determines that it meets the emergency criteria, the appeal must be resolved within three working days.

Are all Medicaid Programs the same?

No. Vermont has several different Medicaid programs with different eligibility criteria and different benefits. For example, the following health care programs in Vermont are paid for with Medicaid funds:

- Medicaid (traditional Medicaid)
- VHAP (VT Health Access Program)
- VPharm (Pharmacy assistance for people on Medicare)
- Catamount Premium Assistance
- Dr. Dynasaur
- Katie Beckett
- VHAP pharmacy
- Vscript
- Vscript Expanded
- Healthy Vermonters
- Working Disabled Program

The following Long Term Care programs are also funded by Medicaid:

STATE TBI PROGRAM

Services Include:

- Case management
- Respite
- Crisis support
- Rehabilitation services
- Assistive technology
- Employment supports
- Community supports
- Psychology/counseling supports
- Special needs (ongoing long-term services)

Vermonters Served:

- People age 16 or older diagnosed with a moderate to severe brain injury;
- Individuals must demonstrate the ability to benefit from rehabilitation and a potential for independent living.

Provider of Services:

Traumatic Brain Injury Providers

Contact: Division of Disability and Aging Services

802-241-1228

website at www.dail.vermont.gov

CHOICES FOR CARE WAIVER

Programs Include:

- Cash and Counseling
- Enhanced Residential Care
- Home-Based Supports
- Nursing Facility Services
- Program for All - Inclusive Care for the Elderly (PACE)
- Personal Care Attendants - Providers can be a person of one's own choice

Vermonters Served:

- People age 65 and over
- People age 18 and over with physical disabilities
- People who qualify for nursing home level of care
- People who are Medicaid eligible

Providers of Services:

- Adult Day Centers
- Area Agencies on Aging
- Assisted Living Residences
- Home Health Agencies
- Nursing Facilities
- Residential Care Homes

Contact:

Department of Disability, Aging and Independent Services

802-241-1228

website at <http://dail.vermont.gov>.

DEVELOPMENTAL SERVICES HOME AND COMMUNITY BASED WAIVER**Vermonters Served:**

- People with developmental disabilities. Newly funded waiver services are currently available only to applicants age 18 and over.

Services Include:

- Service coordination/case management
- Employment services
- Community supports
- Respite
- Family supports

- Home supports
- Clinical interventions
- Crisis services

Contacts:

Developmental services providers

Division of Disability and Aging Services

802-241-1228 | website at <http://dail.vermont.gov>.

MEDICARE

Who is covered?

- Individuals age 65 and over are automatically entitled to Medicare Part A if they or their spouse are eligible for Social Security payments.
- Individuals under 65 who receive Social Security cash payments due to a disability generally become eligible for Medicare after a two-year waiting period.
- Individuals with End-Stage Renal Disease or Amyotrophic Lateral Sclerosis (ALS) are entitled to Part A regardless of their age without any waiting period.

What is covered?

- Part A. Hospital Insurance.
 - *Covers beneficiaries in institutional settings for certain time limits.
 - *Includes: inpatient hospital, skilled nursing facility, hospice and home health care.
 - *For most individuals, Part A is premium free.
 - *Individuals who have not paid Medicare taxes (or whose spouses have not paid Medicare taxes) through employment, do have to pay monthly premiums for Part A.
- Part B. Supplementary Medical Insurance.
 - *Optional coverage. The main benefit of Part B is physician care. It also covers outpatient hospital care, lab tests, medical supplies and home health care.
 - *Enrolled beneficiaries pay monthly premiums. After beneficiaries meet their deductible, Part B pays 80%. Coverage is comprehensive, but not complete.

- Part D. Prescription Drug Benefit

*Created by the Medicare Modernization Act of 2003. For more information on Medicare Part D call 800-Medicare (633-4227) or go to www.medicare.gov

Does Medicare provide comprehensive health care coverage?

No. Even if an individual has both Medicare Part A and Part B, the co-payments and deductibles leave gaps in coverage. These gaps can be filled by supplemental insurance through:

- Medicaid if an individual is eligible for Medicaid.
- Group plans through employers or professional organizations.
- Individual Medigap plans which are nationally standardized plans offered through commercial insurance companies.

RESOURCES

Vermont Legal Aid / Disability Law Project

www.vtlegalaid.org

District Offices:

Chittenden, Franklin, Grand Isle, Addison
counties:

264 North Winooski Avenue, PO Box 1367
Burlington VT 05401
Phone: 802-863-5620/800-747-5022

Rutland, Bennington counties:

57 North Main Street, Suite 2
Rutland VT 05701
Phone: 802-775-0021/800-769-7459

Washington, Orange, Lamoille counties:

7 Court Street, PO Box 606
Montpelier VT 05601
Phone: 802-223-6377/800-789-4195

Windsor, Windham counties:

57 North Main Street, Suite 301
Springfield VT 05156 Phone:
802-885-5181/800-769-9164

Caledonia, Essex, Orleans counties:

177 Western Avenue, Suite 1
St. Johnsbury, Vermont 05819 Phone:
802-748-8721/800-769-6728

Vermont Office of Health Care Advocate
(handles cases statewide)

264 North Winooski Ave.
Burlington, VT 05401
Phone/TTY: 800-917-7787

District Department for Children and Families offices (DCF) are now using a single toll-free number: 18004796151. The addresses for the offices are:

Barre District Office

McFarland Office Building, Suite 150,
5 Perry Street,
Barre, VT 05641-4270

Bennington District Office

200 Veteran's Memorial Drive, Suite 6,
Bennington, VT 05201-1918

Brattleboro District Office

232 Main Street, Second Floor,
Brattleboro, VT 05302

Burlington District Office

119 Pearl Street,
John Zampieri State Office Building,
Burlington, VT 05401-4405

Hartford District Office

118 Prospect Street,
White River Junction, VT 05001

Middlebury District Office

156 South Village Green, Suite 201,
Middlebury, VT 05753

Morrisville District Office

63 Professional Drive, Suite 4,
Morrisville, VT 05661

Newport District Office

100 Main Street, Suite 240,
Newport, VT 05855

Rutland Office

320 Asa Bloomer Building,
88 Merchants Row,
Rutland, VT 05701

Springfield District Office

100 Mineral Street, Suite 201,
Springfield, VT 05156

St Albans District Office

27 Federal Street, Suite 400,
St. Albans, VT 05478

St. Johnsbury District Office

1016 US Route 5, Suite 03,
St. Johnsbury, Vermont 05819

CHAPTER FOUR: ASSISTIVE TECHNOLOGY

WHAT IS ASSISTIVE TECHNOLOGY?

Any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

WHAT ARE SOME EXAMPLES OF ASSISTIVE TECHNOLOGY?

- Motorized and custom-made wheelchairs
- Augmentative communication devices including talking computers
- Vehicle modifications, including wheelchair lifts and hand controls
- Touch screens and switches which allow computer access through voluntary movements such as eye blinks or head movements
- Assistive listening devices, including hearing aids and personal FM units
- Home modifications including ramps, lifts and stair glides

Work site modifications including adapted office equipment and environmental control devices

- Classroom modifications including adaptive seating systems

HOW DO I PAY FOR ASSISTIVE TECHNOLOGY?

- Medicaid
- Medicare
- Special Education
- Division of Vocational Rehabilitation
- Private Health Insurance

Medicaid

An individual who seeks Medicaid funding for AT must generally meet a three-part test:

- The individual must be eligible for Medicaid;

- The device requested must be one that is covered by the Medicaid Program; and
- The device requested must be medically necessary.

Medicare

- The Individual must be eligible for Medicare;
- The device requested must be one that is covered by Medicare;
- The device must be prescribed by a physician;
- It must be provided by an approved Medicare vendor; and
- The Device must be reasonable and necessary for the diagnosis and treatment of illness or injury or to improve the functioning of a malformed body member.

SPECIAL EDUCATION AND THE PUBLIC SCHOOLS

- Requests for AT should be made in writing to the IEP committee.
- The School district must obtain an appropriate evaluation to determine the student's need for AT (at no cost to the student).
- In many cases, it will be necessary to go outside the school system to obtain an adequate evaluation.
- Under special education rules, an AT device is any device that is used to maintain or improve the functional abilities of a person with a disability.
- Under the Board of Education v. Rowley standard, the IEP committee must approve an AT device when it is needed to ensure reasonable educational progress in the least restrictive setting.

SECTION 504 OF THE FEDERAL REHABILITATION ACT

- Children whose disabilities do not meet special education criteria, who still need special assistance, including AT, are covered by Section 504 of the Rehabilitation Act. This plan is called a 504 Plan.
- Section 504 requires reasonable steps to ensure that students with disabilities have access to the school's full range of programs and activities.

THE STATE VOCATIONAL REHABILITATION(VR) AGENCY

- V.R. agencies can fund a wide range of goods and services, including rehabilitation technology (or A.T.), when it is connected to a person’s vocational goal.
- To receive services an individual must be disabled and require VR services to prepare for, enter, engage in, or retain gainful employment. Persons must show a mental, physical or learning disability that interferes with the ability to work. The disability need not be so severe as to qualify the person for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits. Persons who receive SSDI or SSI benefits are presumed to meet the disability criteria.
- After eligibility is established, the individual and the VR counselor must develop an Individual Written Rehabilitation Program (IWRP). Any service to be provided or funded by the VR agency must be specified on the IWRP. VR services are defined as “any goods or services to render an individual with a disability employable.” Services may include assistive technology. VR agencies are the payer of last resort for many services. This means they will not pay for a service if a similar benefit is available through some other agency or program.

For more information on Vocational Rehabilitation, see Chapter Seven of this Resource Guide.

WHAT HAPPENS IF THE ASSISTIVE TECHNOLOGY DEVICE I RECEIVE IS DEFECTIVE?

Vermont has enacted an Assistive Technology “Lemon Law”. The purpose of the law is to ensure that newly acquired assistive technology devices have no defects in parts or performance and are free from any condition or defect that would substantially impair the device’s use, value or safety to the consumer.

- The law only covers wheelchairs and other mobility devices and computer equipment with voice output.
- If there is a problem with a new device it will be fixed at no charge to the consumer. This includes parts, labor, shipping, delivery and all other costs. (Damage caused by abuse is not covered)

- Manufacturer or authorized dealer is to ensure that the consumer is provided with a loaner if the device has any condition or defect that cannot be remedied in one business day. Loaners must:

- *Be in good working order;

- *Perform the essential function of the device being repaired;

- *Not create a threat to the safety of the user; and

- *Be provided within 2 business days after notice from the consumer of the problem. (Except for equipment that requires extensive retro fitting in order to perform the essential functions. Such a device must be provided as soon as possible, but in no case later than 10 business days after notice.)

- If the device is not repairable, the manufacturer or authorized dealer must do one of the following:

- *Replace the device and refund any collateral costs;

- *Refund to the consumer the full purchase price plus any finance charges; or

- *Refund current value of lease plus any collateral costs less a reasonable allowance for use.

- Violation of the law is deemed to be an unfair or deceptive practice in commerce.

- *Consumer may bring a civil action in Superior Court.

- *Consumer may call the Consumer Assistance Program at UVM (1-800-649-2424).

- *Consumer may call Legal Aid at 1-800-889-2047.

- *Consumer may file in small claims court.

WHAT OTHER RESOURCES ARE THERE FOR FUNDING ASSISTIVE TECHNOLOGY?

•Opportunities Independence Fund

This fund makes affordable loans for the purchase of Assistive Technology, including dentures. Loans can be for the full cost of the equipment or a portion of the cost. The Independence Fund offers affordable interest rates and reasonable repayment terms.

Who Qualifies?

*Any Vermonter with a disability seeking Assistive Technology is eligible to apply for a loan.

*Borrowers must show how the equipment they want to purchase relates to their specific disability.

*To confirm borrower's ability to repay loans, Opportunities will review income, expenses and credit history.

*Many individuals who cannot qualify for bank loans can receive Independence Fund loans through Opportunities' counseling-based system.

*The fund pays for any Assistive Technology device or service that helps a person with a disability become more independent at home, work, play or school.

*Contact:

»Opportunities Credit Union Lending and Administrative Offices

»92 North Avenue, Burlington, VT 05401

»Telephone: 800-865-8328 or 802-645-4540

»Fax: 802-654-4551

•The Sue Williams Freedom Fund

This fund provides funding for services and equipment to help people with disabilities achieve or maintain independence in their own homes. The program is located at the Vermont Center for Independent Living.

Who qualifies?

*Any Vermonter with a disability who requires funding for equipment needed to help become more independent in the home.

•Home Access Program (HAP)

This program provides funds for home entry and bathroom accessibility for low-income Vermonter's with disabilities. Examples of covered modifications include hand-held showers, ramps, lifts and roll-in showers.

Who Qualifies?

*Any Vermonter with a disability whose income is 80% of the median income.

Contact

VCIL Locations: Our central office is in Montpelier. Branch offices are located in Bennington, Brattleboro, Morrisville, Rutland and Burlington. Field-based services are provided in every county in Vermont.

Central Office

11 East State Street
Montpelier, Vermont 05602
802-229-0501 (voice / TTY)
800-639-1522 (toll-free voice / TTY)
802-229-0503 (fax)
802-662-1153 (Videophone)
info@vcil.org

Branch Offices

Bennington

P.O. Box 82, 601 Main Street
Bennington, VT 05201
802-447-0574 (voice / TTY)
802-681-9096 (Videophone)

Brattleboro

28 Vernon St., Suite 412
Brattleboro, VT 05301
802-254-6851 (voice)
802-264-0328 (TTY)
802-275-0099 (Videophone)

Burlington

7 Kilburn St., Suite 312
Burlington, VT 05401
802-861-2896 (voice)
802-881-0138 (Videophone)

Morrisville

85 Portland St., Suite 3
Morrisville, VT 05661
802-888-2180 (voice)
802-888-1593 (fax)
Please call for an appointment.

Rutland

60 Center St., Suite 1
Rutland, VT 05701
802-779-9021

•Vermont Family Network

Vermont Family Network is partnering with the National Cristina Project to provide recycled computers to Vermont families in need.

Who qualifies?

Any Vermonter with a disability or a special needs child who would benefit from a recycled computer to lead a more productive and independent life.

Contact:

Vermont Family Network

600 Blair Park Road, Suite 240

Williston, VT 05495

1-(800)- 800-4005 or 1-(802)-876-5315

CHAPTER FIVE: SOCIAL SECURITY DISABILITY BENEFITS

DEFINITIONS

- Disability: The inability to engage in “substantial gainful activity” because of a medically determinable physical or mental impairment(s) that is expected to last at least 12 months or result in death.
- Substantial Gainful Activity (SGA): Although this number changes every year, in 2019 SGA is \$1220(for the blind or visually impaired \$2040).

TYPES OF DISABILITY PROGRAMS

- Social Security Disability Insurance (SSDI)
- Supplemental Security Income (SSI)

| | |
|---|---|
| <ul style="list-style-type: none"> •SSI | <ul style="list-style-type: none"> •SSDI |
| <ul style="list-style-type: none"> •Social welfare program •Base on financial need •Must have limited resources •Medicaid immediately •Recipient | <ul style="list-style-type: none"> •Insurance program •Based on work history •Unlimited resources •Medicare 2 year wait •Beneficiary |

APPLICATION PROCESS

- Call Social Security at 1-800-772-1213 or the local office:
 Burlington 877-840-5776
 Montpelier 877-505-4542
 Rutland 866-690-1944
- Schedule interview in person or by phone. The interview will consist of the following:
 - *work history

- *income
- *resources and assets
- *diagnosis

The phone interview will determine if you've worked enough to qualify for SSDI or meet the financial guidelines to be eligible for SSI.

- Complete paper application and submit.
- Social Security sends your material to Disability Determination Services (DDS).
- DDS doctors review the medical evidence and previous work history.
- Decision is made usually in 3-6 months.
- Client is notified by mail.

80% of all claims are denied at the initial application level.

ELIGIBILITY

The medical evidence must satisfy a 2 part criteria test

- Part 1- Paragraph A
- Part 2- Paragraph B

Paragraph A

- Medical evidence must show a marked impairment in at least two of the following:
 - *Activities of daily living: shopping, cleaning, taking care of yourself, managing your own money, cooking, etc.;
 - *Concentration, Persistence and Pace: paying attention, concentrating, finishing tasks or projects in the same amount of time as it would take most people, following directions, remembering;
 - *Social Functioning: getting along with others, having friends, interacting appropriately with the public, being cooperative with co-workers;
 - *Episodes of Decompensation: signs or symptoms of your condition get worse when you try to return to work or are in a work-like setting such as school.
- Alcohol or drug use (or former use) can not be a contributing factor in the disabling condition.
- Impairment must be expected to last at least 12 months or result in death.

Paragraph B

Your impairment must be on the Social Security Administration's approved list of impairments and must meet specific criteria.

There are 12 categories of impairments:

- Each category contains multiple diagnoses.
- Each diagnosis has specific criteria that have to be satisfied.
- The criteria can be found in the "Blue Book" at www.ssa.gov/bluebook.
- DSM IV criteria are consistent with SSA criteria.

Examples of common criteria for common psychiatric disabilities that may relate to TBI:

- Affective Disorders

- * Depressive episode characterized by four of the following:

- » loss of interest in almost all activities
 - » appetite disturbance with change in weight
 - » sleep disturbance
 - » psychomotor agitation or retardation
 - » decreased energy
 - » feelings of guilt or worthlessness
 - » difficulty thinking or concentrating
 - » suicidal thoughts
 - » hallucinations, delusions, or paranoid thinking

- * Manic syndrome with three of the following:

- » hyperactivity
 - » pressure of speech
 - » flight of ideas
 - » inflated self-esteem
 - » decreased need for sleep
 - » easily distracted
 - » engaging in high-risk behavior
 - » hallucinations, delusions, or paranoid thinking

- Anxiety–Related Disorders

- *generalized persistent anxiety with three of the following:

- »motor tension
 - »autonomic hyperactivity
 - »apprehensive expectation
 - »vigilance or scanning

- *A persistent irrational fear of an object, activity or situation resulting in avoidance
 - *Recurrent severe panic attacks that are unpredictable and occur at least once a week; characterized by intense fear and sense of impending doom
 - *Recurrent obsessions or compulsions which are a source of significant distress
 - *Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress

- Schizophrenic, Paranoid and other Psychotic Disorders

- *Evidence of one or more of the following:

- »Delusions or hallucinations
 - »Catatonic or grossly disorganized behavior
 - »incoherence or loosening of thoughts, illogical thinking including:

1. blunt affect, or
2. flat affect, or
3. inappropriate affect

- *Emotional withdrawal and/or isolation

LEVELS OF THE APPEALS PROCESS

- 80% of all claims are denied at the initial application level
- Clients have 60 days to appeal Social Security’s decision

RECONSIDERATION

- Call SSA and ask for a reconsideration.
- Applicant will be sent a short form asking for the reason for the request.

- The reason for the request can be, “I am disabled and unable to work.”
- Another reviewer examines the medical evidence and issues a decision.
- Takes 3-6 months.
- If unfavorable decision is issued, proceed to the next level.

ADMINISTRATIVE LAW HEARING

- Call SSA and request a hearing before an Administrative Law Judge.
- The hearing takes 9-12 months to schedule.
- The hearing occurs in an informal setting such as a conference room.
- Present will be the judge, stenographer, and vocational expert.
- You can bring a lawyer, advocate, witnesses and new evidence to the hearing.
- Support people are not allowed in unless they are testifying.
- The duration of the hearing is approximately 30 minutes and you can take breaks if needed.
- The decision is usually rendered in 4-6 weeks.

APPEALS COUNCIL

- do not need a lawyer;
- do not need to appear in person;
- council reviews the evidence to see if judge made an error;
- may reject the case, reverse the decision or require you to file a suit in federal court.

RECEIVING BENEFITS

| | |
|---|---|
| <ul style="list-style-type: none"> •SSI | <ul style="list-style-type: none"> •SSDI |
| <ul style="list-style-type: none"> •\$802.04* cash benefit - individual •\$1223.88* cash benefit – couple •*2019 benefit amounts | <ul style="list-style-type: none"> •Your monthly benefit depends on how much you have paid in taxes. |
| <ul style="list-style-type: none"> •Payable on the 1st of the month | <ul style="list-style-type: none"> •Pay date depends on your birth date |

| | |
|--|---|
| <ul style="list-style-type: none"> •You must report the following changes: <ul style="list-style-type: none"> *address *living arrangement *income and resources *incarceration *marital status *being in a hospital > 30 days *receive other benefits | <ul style="list-style-type: none"> •You must report the following changes: <ul style="list-style-type: none"> *earned income *incarceration |
| <ul style="list-style-type: none"> •Lose \$1 for every \$2 earned | <ul style="list-style-type: none"> •unlimited earnings for 9 cumulative months, followed by a 3 month grace period and then lose all if earnings > SGA Amount. |

PRISONERS AND DISABILITY BENEFITS

- You cannot collect benefits for any month in which you are incarcerated for any period of time.
- You are not eligible for benefits if there is an outstanding warrant based on flight from prosecution for your arrest.
- Minor children and disabled dependents of SSDI beneficiaries will continue to receive a benefit equivalent to ½ of the benefit amount.
- Example: John Doe was receiving \$800 in SSDI and has two children. John goes to jail. Each of his children will continue to get \$200 monthly until their 18th birthday. SSI benefits will be reinstated if John Doe is released within 12 months.
- Prisoners can apply for benefits if they have a release date.

RESOURCES

Social Security www.ssa.gov 1-800-772-1213

Burlington 877-840-5776

Montpelier 877-505-4542

Rutland 866-690-1944

CHAPTER SIX: GUARDIANSHIP AND ALTERNATIVES TO GUARDIANSHIP

INTRODUCTION

Guardianship: A legal relationship between a court appointed person or program and a person who the court has found needs a guardian due to mental disability.

Guardianships may be voluntary or involuntary. Until the age of 18 a person's parents are considered to be their natural guardian, unless there is a court order awarding guardianship to another person. After the age of 18, a person is their own guardian unless otherwise ordered by a court.

Guardian ad Litem: A person appointed by a court to "stand in the shoes" of a party in a court action where that party is not able to understand the nature of the proceedings or give direction to their attorney. A guardian ad litem does not have any "guardianship powers." The guardian ad litem's role is to give direction to the court and to the attorney when a party is not able to do so on his or her own. A guardian ad litem's role does not extend beyond the scope of the court proceedings.

GUARDIANSHIP FOR ADULTS

General:

- Process by which probate court appoints one person ("the guardian") to supervise and protect the interests of another person ("person under guardianship").
- Imposition of guardianship means the person under guardianship loses some rights and liberties. The person under guardianship should be subjected to no greater supervision and control than is necessary. The need for self-determination must be balanced against the need for protection.

- Guardianship should be used only as a last resort and may only be imposed after all less restrictive alternatives have been exhausted.
- When required, guardianship should be individually tailored to protect the personal and financial interests of the person under guardianship without unnecessarily restricting his/her rights and liberties.
- A person under 18 years of age is under the natural guardianship of his/her parents unless a court has decreed otherwise. Regardless of the severity of a mental impairment, once an individual reaches 18, he/she is his/her own guardian unless otherwise directed by a court.

INVOLUNTARY GUARDIANSHIP IN PROBATE COURT

- May only be ordered where the subject of the proposed guardianship is:
 - *At least 18 years old; and
 - *Is unable to manage, without supervision of a guardian, some or all aspects of their personal or financial affairs as a result of:
 - »significantly sub average intellectual functioning which exists concurrently with deficits inadaptive behavior; or
 - »a physical or mental condition that results in significantly impaired cognitive functioning which grossly impairs judgment, behavior, or the capacity to recognize reality.

Unable to Manage his or her Personal Care: means the inability, as shown by recent behavior, to meet one's needs for medical care, nutrition, clothing, shelter, hygiene or safety, so that physical injury, illness or disease has occurred or is likely to occur in the near future.

Unable to Manage his or her Financial Affairs: means gross mismanagement, as shown by recent behavior, of one's income and resources which has led to or is likely in the near future to lead to financial vulnerability.

GUARDIANSHIP POWERS

- General Supervision over the person under guardianship including the care, habilitation, education and employment of the person under guardianship, and choosing or changing the residence of the person under guardianship (subject to court review in certain situations);
- The power to seek, obtain, and give or withhold consent for medical or dental treatment (subject to court review in certain situations) for the person under guardianship;
- The power to exercise general financial supervision over the income and resources of the person under guardianship;
- The power to approve or withhold approval of any contract, except for necessities, the person under guardianship wishes to make;
- The power to approve or withhold approval of the sale or encumbrance of real property of the person under guardianship;
- The power to obtain legal advice and to commence or defend against court actions in the name of the person under guardianship.

Full Guardianship: when the guardian holds all guardianship powers.

Limited Guardianship: when the guardian holds some but not all guardianship powers.

Guardianship powers may only be ordered to the extent required by the actual mental and adaptive limitations of the person over whom guardianship is sought. Guardians are required to exercise supervisory powers over the ward in a manner which is least restrictive of the ward's personal freedom consistent with the need for supervision.

Advance Directives: When a person under guardianship has a pre existing Advance Directive, the authority of the agent and the instructions in the Advance Directive remain in effect after a guardianship order is entered, unless the probate court expressly orders otherwise as a result of a petition for review of the Advance Directive.

PROCEDURE

Filing the Petition: A Petition for guardianship must be filed in the Probate Court in the county where the person who is the subject of the guardianship petition lives. Probate courts have copies of the petition and other forms that need to accompany the petition.

Court will send notice of the petition to the person who is the subject of the guardianship petition and all interested persons identified in the petition and accompanying documents. The Court will also order an evaluation of the person who is the subject of the guardianship petition and schedule the hearing.

Appointment of an Attorney: Unless the person who is the subject of the guardianship petition already has an attorney, the court must appoint an attorney to represent him/her in the guardianship proceeding.

Role and Responsibilities of the Attorney: The attorney for the person who is the subject of the guardianship petition:

- Receives a copy of the petition and all other documents filed with the court;
- Must consult with the person who is the subject of the guardianship petition prior to any court hearing;
- Must explain the proceedings to the person who is the subject of the guardianship petition;
- Must act as an advocate for the person who is the subject of the guardianship petition and not substitute his/her own judgment for that of the person who is the subject of the guardianship petition on the subject of what may be in their best interests;
- Must try to ensure that:
 - *The wishes of the person who is the subject of the guardianship petition, including any wishes contained in an Advance Directive, are presented to the court;
 - *There is no less restrictive alternative to guardianship or to the matter before the court;
 - *Proper due process is followed;
 - *No substantial rights of the person who is the subject of the guardianship petition are waived (except with the consent of the person who is the subject of the guardianship petition and the court's approval);

- *The allegations in the petition are proved by clear and convincing evidence;
- *The proposed guardian is qualified to serve;
- *The court's order is the least restrictive of the personal freedom of the person who is the subject of the guardianship petition consistent with the need for supervision.

Serving Notice of the Hearing: The petitioner is responsible for serving copies of the petition and notice of the hearing on the person who is the subject of the guardianship petition and all interested persons. Service must be made by certified mail unless the court orders otherwise.

- Evaluation and Scheduling the Hearing: The evaluation of the person who is the subject of the guardianship petition must be completed within 30 days of the filing of the petition. The hearing must be held between 15 and 30 days after the filing of the evaluation with the probate court. The hearing can be postponed for up to 15 additional days for good cause.
- Guardian ad Litem (GAL): If the person who is the subject of the guardianship petition is unable to communicate with or advise their attorney, the court may appoint a guardian ad litem.
- Evaluation: Ordered by court and must be performed by someone who has specific training and demonstrated competence to evaluate a person in need of guardianship. Purpose of evaluation is to assess the effect of any disability on the ability of the person who is the subject of the guardianship petition to exercise those powers for which guardianship is sought. The person who is the subject of the guardianship petition is responsible for paying costs of evaluation. If the person who is the subject of the guardianship petition is unable to pay costs, the court will order that the state provide the evaluation through a community mental health center. Evaluation should be independent and not performed by an agency where the person who is the subject of the guardianship petition is receiving services or has received services.
- Background Check: The court will order a background check of the proposed guardian from available state registries and will consider information received from the registries in determining whether the proposed guardian is suitable. The court may, in its discretion, waive the background check or proceed with appointment of a guardian prior

to receiving the background reports. The court may remove a guardian if warranted by background reports received after the guardian's appointment.

WHO CAN SERVE AS GUARDIAN?

- Must be competent and at least 18 years old.
- Cannot be a person who operates or is an employee of a boarding home, residential care home, assisted living residence, nursing home, group home, developmental home, correctional facility, psychiatric unit at a designated hospital, or other similar home or facility in which the person under or in need of guardianship lives.
- Court will take into consideration: the nomination of a guardian in an advance directive or will and current or past expressed preference of the person under guardianship, the geographic location of the proposed guardian, the relationship of the proposed guardian to the person under guardianship, the ability of the proposed guardian to carry out the powers and duties of the guardianship, the willingness and ability of the proposed guardian to communicate with the person under guardianship and to respect the choices and preferences of the person under guardianship, and any potential conflict of interest between the person under guardianship and proposed guardian.

HEARING

- Must be tape recorded;
- The person who is the subject of the guardianship petition, the petitioner and all other people who received notice may attend the hearing and testify;
- The person who is the subject of the guardianship petition and the petitioner may subpoena, present and cross-examine witnesses. The petitioner may be represented by an attorney;
- The person who is the subject of the guardianship petition may request that the court exclude from the hearing any person not necessary for the conduct of the hearing;
- The evaluation will be received into evidence only if the person who prepared the evaluation is available for the hearing. Even if the evaluation is received into evidence, the court is not bound by its contents. The court must draw its own conclusion based on all the evidence presented at the hearing;

- The petitioner has the burden of proving by clear and convincing evidence that the person who is the subject of the guardianship petition is at least 18 years old and is unable to manage some or all aspects of his/her personal care or financial affairs due to either significantly sub average intellectual functioning existing concurrently with deficits in adaptive behavior, or due to a physical or mental condition that results in significantly impaired cognitive functioning which grossly impairs judgment, behavior, or the capacity to recognize reality.

Temporary Or Emergency Guardianship: If a petitioner feels that the physical or financial interests of the person who is the subject of the guardianship petition are likely to suffer serious or irreparable harm while waiting for the completion of the court process, he/she may ask the court to appoint a temporary guardian to serve until the full guardianship process has been completed. This is done by filing a Motion for Appointment of Temporary Guardian along with the Petition for Involuntary Guardianship.

DUTIES AND RESPONSIBILITIES OF A GUARDIAN

- Guardian must maintain close contact with the person under guardianship and encourage maximum self-reliance of the person under guardianship.
- Guardian must exercise supervisory powers in a manner which is least restrictive of the personal freedom of the person under guardianship.
- Guardian must encourage the person under guardianship to participate in decisions, to act on his or her own behalf when practicable, and to develop or regain the capacity to manage his or her own affairs to the maximum extent possible.
- The wishes, values, beliefs and preferences of the person under guardianship must be respected to the greatest possible extent in the exercise of all guardianship powers.
- Guardian should make sure that the person under guardianship receives those benefits and services which he/she needs to maximize his/her opportunity for social and financial independence.
- If guardian holds financial power, he/she must manage the financial affairs of the person under guardianship frugally, without waste, and in a manner beneficial to the person under guardianship.

- Within 30 days of being appointed a guardian must submit to the court an inventory of the personal and real property of the person under guardianship. Each year after that, on the anniversary date of his/her appointment, the guardian must file with the court a personal status report and, if he/she holds financial powers, an accounting. Failure to file an annual report and accounting may be grounds for termination of the guardianship.
- A guardian may be permitted to collect necessary expenses and fees from the person under guardianship. All claimed expenses must be documented in an accounting. If requesting guardianship fees, the guardian must describe in detail the work done on behalf of the person under guardianship.

LIMITATIONS ON GUARDIANSHIPS:

- A person for whom a limited guardianship has been ordered retains all legal and civil rights except those which have been specifically granted to the limited guardian.
- The guardian's power to consent to medical treatment is subject to any constitutional right of the person under guardianship to refuse treatment.
- Any sterilization sought on behalf of a person under guardianship is considered an involuntary sterilization. Involuntary sterilization may be performed only after a hearing in Superior Court. The person under guardianship must be represented by counsel.
- If a guardian wishes to approve a "Do Not Resuscitate", "No Code" or "termination of Life Support" order, or to refuse significant medical treatment, he/she must first get permission from the Probate Court.
- A person under guardianship retains all legal and civil rights.
- A person under guardianship has the right to participate in decisions made by the guardian and to have personal preferences followed unless the preference is unreasonable and would result in actual harm, or the person under guardianship lacks a basic understanding of the benefits and consequences of his/her chosen preference.
- A person under guardianship has the right to retain an attorney.

Change in Residential Placement: Where a guardian wishes to move a person under guardianship from a lesser to a more restrictive residential placement, the guardian must first file a motion with the probate court requesting the court's permission to do so. In

an emergency a guardian may move a person under guardianship to a more restrictive residential placement without petitioning the court for permission. However, immediately after the emergency change in placement the guardian must file a motion to continue the placement with the court. A guardian does not have the authority to place a person under guardianship in the Vermont State Hospital or other institution operated by the Division of Developmental and Mental Health Services without going through the relevant statutory commitment procedures.

MODIFICATION OR TERMINATION OF GUARDIANSHIP

- Any interested person, including the person under guardianship, may file a motion at any time for termination or modification of the guardianship.
- Grounds for termination or modification include:
 - * A change in the ability of the person under guardianship to manage his/her personal care or financial affairs.
 - * Death of the guardian.
 - * Failure of the guardian to file an annual report or accounting or failure to file an annual report or accounting in a timely manner.
 - * Failure of the guardian to act in accord with an order of the probate court.
 - * A change in the capacity or suitability of the guardian for carrying out his/her powers or duties.
 - * Abuse, exploitation, financial mismanagement or neglect by the guardian.

Appeals: Any party to a probate proceeding may appeal the decision to either the Superior Court or the Vermont Supreme Court.

Voluntary Guardianship: Voluntary guardianship is available only for individuals over 18 years of age who do not have a diagnosis of mental illness or mental retardation. Courts will sometimes overlook this requirement and allow voluntary guardianship for people with a diagnosis of mental retardation.

- Advantages of Voluntary Guardianship
 - * Person requesting the guardianship can specify who they want to act as guardian.

*Person requesting the guardianship can specify which powers they want the guardian to have.

*Person under guardianship can ask that the court revoke the guardianship at any time. If the guardian does not file a petition for involuntary guardianship, the court must revoke the voluntary guardianship. No hearing required.

Guardianship Powers: The powers which may be awarded to a guardian in a voluntary guardianship are the same as those which may be awarded under an involuntary guardianship.

ALTERNATIVES TO GUARDIANSHIP

Representative Payee:

•In general: Payment of SSI or other federal benefits to Representative Payee (“Rep Payee”) for adults who are unable to manager their own funds and in most cases for children. Rep Payee receives check and is responsible for using the funds to meet the needs of the beneficiary (or recipient). Useful where person has limited need for financial management other than public benefits (limited resources and income).

•Advantages:

*Dignity and independence maintained in other areas of personal choice

*No judicial finding of incapacity

*Simple and inexpensive

•Selection of Representative Payee:

*Person who will best serve the interests of the SSI beneficiary.

*Relatives and close friends are preferred.

*An agency or organization may be appointed if no suitable friend or relative can be found.

*Individual wishing to serve as Rep Payee must file application with the Social Security Administration and provide information regarding applicant’s relationship with the beneficiary.

•How does a Representative Payee use the SSI Funds?

*Must use SSI funds only in the best interests of the beneficiary.

*May properly be used for current maintenance of the beneficiary: rent, utilities, clothing, medical needs, food, etc.

*Rep Payee does not have to use money to pay off debts incurred before beneficiary became eligible for SSI if to do so would make it difficult to meet beneficiary's current expenses.

*May invest or save any funds not needed for beneficiary's current expenses.

•Reporting Requirements of the Representative Payee: Must report to the Social Security Administration any changes that affect the beneficiary's eligibility for SSI or the amount of their SSI entitlement, including:

*Change of address;

*Change of living arrangements - including number of people living in household where beneficiary lives;

*Any change in income for beneficiary and ineligible spouse, child, or parent if they are living together;

*Changes in resources;

*Changes in eligibility for other benefits;

*Marital status of the beneficiary;

*Any medical improvement of the beneficiary;

*Refusal of beneficiary to accept vocational rehabilitation or drug or alcohol treatment;

*A change in the beneficiary's attendance at school;

*Termination of residence in the United States or leaving the United States temporarily;

*Beneficiary's admission to or discharge from a medical facility or a public or private institution.

•Accounting by Representative Payee: Rep Payee must periodically file written reports with the Social Security Administration.

*Accounting should include:

»The amount of money on hand at the beginning of the accounting period;

»How much money was used during the period and what it was spent for;

- »How much money was saved and invested during this period;
- »Where the beneficiary lived during this period;
- »The amount of money the beneficiary received from other sources during the accounting period.

- The Rep Payee should keep records for verification of all information.
- Overpayments

If an overpayment notice is received the Rep Payee should verify that the incorrect payments were made and determine the cause of the overpayment.

If the beneficiary is without fault in causing the overpayment, a request for waiver of the overpayment should be filed. A waiver prohibits recoupment of the overpayment from present benefits. If the request for waiver is denied, the Rep Payee may appeal the denial. Legal counsel may be obtained.

- Medical Reviews

If a notice of medical review is received, recent medical information should be supplied to Social Security. If the beneficiary receives a notice of termination of eligibility following the review, an appeal should be requested. Legal counsel may be available to assist with the appeal.

- Liability of Representative Payee

A Representative Payee may be held liable for the misuse of the beneficiary's funds.

A Representative Payee is not personally liable for the debts of the beneficiary.

- Termination of Representative Payment

Representative payment will stop when the beneficiary demonstrates through medical or other evidence that they are able to manage or direct the management of their benefits in their own best interests.

ADVANCE DIRECTIVE

- A person (the principal) chooses another person (the agent) to make health-care decisions on his/her behalf after the principal has become incapacitated and unable to make those decisions, or provides direction directly to treatment providers within the Advance Directive if the person is determined to lack capacity to make medical decisions.

- The agent’s authority may only be in effect when the principal lacks capacity to make health care decisions as certified in writing by the principal’s attending physician and filed in the principal’s medical record, unless otherwise specified in the Advance Directive.
- After consulting with the principal’s health care providers, the agent is required to make health care decisions:
 - *In accordance with the agent’s knowledge of the principal’s wishes and religious or moral beliefs. Can look to statements made by principal, orally, in a Durable Power of Attorney (DPOA), or in a living will.
 - *If principal’s wishes are not known - in accordance with the agent’s assessment of the principal’s best interests.
- Agent may not consent to certain procedures including involuntary admission to any state institution or to voluntary sterilization.

OTHER SERVICES AND SUPPORTS

Before resorting to guardianship, thorough consideration should be given to what may be inhibiting the person’s ability to make judgments about financial matters and/or personal care. There should be a thorough analysis of what lesser restrictive alternatives may be available to meet the individual’s circumstances. In this analysis, the following services and supports should be considered:

- Informal assistance - from friends, circle of support, designated individual, etc.
- Some form of “home share” or supported living.
- Attendant Care services or Home Health services to address needs such as assistance with activities of daily living, medication, shopping, house cleaning, cooking.
- Adaptive Equipment or Assistive Technology
- Adult Day Care, Senior Citizens, Community Mental Health and Developmental Services programs
- Meals on Wheels
- Case Management
- Vermont Center for Independent Living

RESOURCES

Vermont Probate Courts:

Addison Probate Division

7 Mahady Court, Middlebury, VT 05753
p. 802-388-7741

Bennington Probate Division

207 South Street, Bennington, VT 05201
p. 802-447-2700

Caledonia Probate Division

1126 Main Street, Suite 1,
St. Johnsbury, VT 05819
p. 802-748-6600

Chittenden Probate Division

175 Main Street, Burlington, VT 05402
p. 802-651-1518

Essex Probate Division

75 Courthouse Dr., Guildhall, VT 05905
p. 802-676-3910

Franklin Probate Division

17 Church Street, St. Albans, VT 05478
p. 802-524-4112

Grand Isle Probate Division

PO Box 7, North Hero, VT 05474
p. 802-372-8350

Lamoille Probate Division

154 Main Street, Hyde Park, VT 05655
p. 802-888-3887

Orange Probate Division

5 Court Street, Chelsea, VT 05038
p. 802-685-4610

Orleans Probate Division

247 Main Street, Newport, VT 05855
p. 802-334-3305

Rutland Probate Division

83 Center Street, Rutland, VT 05701
p. 802-775-0114

Washington Probate Division

65 State Street, Montpelier, VT 05602
p. 802-828-2091

Windham Probate Division

30 Putney Road, 2nd Floor,
Brattleboro, VT 05301
p. 802-257-2800

Windsor Probate Division

12 The Green, Woodstock, VT 05091
p. 802-457-2121

CHAPTER SEVEN: VOCATIONAL REHABILITATION

WHAT IS VOCATIONAL REHABILITATION?

- Vocational Rehabilitation (Voc Rehab or VR) is a federal program to help people with disabilities learn job skills, find work and reach employment goals.
- VR is a federal program run by the State of Vermont, through the Department of Disabilities, Aging and Independent Living.

WHAT DOES VR DO?

- VR counselors will meet with you to talk about what kind of work you want to do. They will also try to find out what kind of work you are able to do.
- VR can help you find job training to get the skills you need to work. It can help you look for work, and help to match you with employers looking for people with your skills.
- VR can help find ongoing support for you while you work, help you get reasonable accommodations from your employer, help you get assistive technology to assist you with your work, or help make sure that having a job does not endanger your disability benefits.

WHAT KIND OF WORK CAN VR HELP ME GET?

What you do depends on the nature of your disability and on your employment goals. Jobs can be full or part time. Some jobs are in a regular office or job site, or possibly working from your own home.

WHAT IS SUPPORTED EMPLOYMENT?

- In supported or assisted employment, you have a job coach or counselor who works with you to help with your job. The coach is usually there for a few hours each week.
- The coach will help you learn new skills so you can do your job better, can help you work with your supervisor to create a better work environment, or help you solve problems that may come up in your work.

HOW DO I APPLY FOR VR SERVICES?

- Contact your local VR office. A list of local VR offices is at the end of this section. You can visit in person or call the office.
- A VR staff member will help you fill out a short application form. You will then get an appointment to see a counselor. In some VR offices, a group orientation session is offered to people interested in VR services.
- You will meet with a VR counselor to talk about your disability, how it affects your ability to work, and what kinds of work you are interested in. The two of you will determine if more information is needed about your disability.
- The counselor may ask you to sign a Release of Information form so they can get medical information to decide if you qualify for services.

WHAT HAPPENS AFTER I APPLY FOR SERVICES?

- If your application is approved, the next step is to look at the kinds of work you want to do. You and the counselor will develop an “Individualized Plan for Employment.” This is a written plan that describes your employment goal and the types of services VR will provide and the steps you and your counselor will take to help you get work.
- If you need job training, VR will help arrange it. This could include some classroom training, some on-the-job training, or a special work-training program. The training could be short or long-term depending on the type of career that you want to prepare for.
- A placement specialist will help you look for work. The counselors can also help you learn some general work skills, work on a resume and fill out job applications.

CAN VR HELP GET EQUIPMENT TO SUPPORT MY WORK?

- If you qualify, VR may be able to obtain equipment or assistive technology for you or your employer to help with your work.
- You may be able to get special computers, control devices to help you use machinery, communication devices, equipment to help you move around the workspace, or modifications of the workspace to allow you to work there.

If I apply for VR services, do they have to help me?

- Not everyone qualifies for services. VR will look at the kind of disability you have, what kind of work you may be able to do, and whether you can use assistive technology to help you in your work. If VR decides that you do not meet their eligibility criteria, they may deny your application.
- If you are denied VR services, you have a right to appeal the decision. The VR office must give you information about how to make an appeal. There may also be mediation services available to help you resolve a dispute.
- If you are denied, you may call an attorney or legal services organization, such as the CAP program, to help you with an appeal.
- Sometimes VR has more demand for job assistance than they can provide. If demand exceeds resources, VR must try to give its services to clients with the most severe disabilities first.

WHAT IF MY COUNSELOR AND I DISAGREE ABOUT VR SERVICES?

- If you have a disagreement with VR staff, you may contact the Client Assistance Program (CAP). CAP is part of the Disability Law Project of Vermont Legal Aid. CAP is there to advise you when you have a disagreement with VR and other support agencies. You may contact CAP by calling 1-800-889-2047, or writing to CAP at 57 North Main St., Rutland, VT 05701.

DOES VR CONTINUE TO HELP ME ONCE I HAVE A JOB?

- VR can provide on-the-job support if you need help learning the job or learning how to be a good employee. Your counselor will work with you and your supervisor to make sure that accommodations for your disability are in place. Some people need a lot of help adjusting to a job. Others need only minimal support. On-going job support can also be arranged through other local agencies. VR can also provide services to an individual who already has a job in order for that person to maintain or advance in that job. These are called post-employment services.

IF I GO BACK TO WORK, WILL I LOSE MY MEDICAID OR OTHER BENEFITS?

- Some disability-based benefits, like Medicaid, are tied to your income. If you earn too much money, you might lose the benefit. For people who get certain benefits, especially Supplemental Security Income (SSI), it is important to keep track of how much money you earn, so that you can keep your benefits.
- If you want to work but are worried about what will happen to your benefits, you can talk to a VR Benefits Counselor. The counselors can help you understand the Social Security work incentive programs. They can work with you to decide if you will be financially better off if you work, and if you can work and keep getting your benefits.

I AM ABOUT TO FINISH HIGH SCHOOL AND WANT TO FIND A JOB. CAN VR HELP?

- VR counselors work with high school students with disabilities who are moving into adult life. Youth and their families can get counseling about finding work and getting training for job skills. VR counselors can also help youth understand the impact of getting a job or the benefits they receive.
- If you are in school and have an IEP, your school should talk to you about including VR services in your transition plan.

WHAT IF I WANT TO WORK IN AN AGRICULTURAL AREA?

- VR has a special program for rural and farm families to help people with disabilities work in agriculture. Members of rural and farm families with disabilities are eligible for evaluation, counseling and job placement through this program. Counselors in this program have experience with all kinds of agriculture, including dairy farming, logging, landscaping, market gardening, agribusiness, aquaculture, and self-employment. The local VR offices can help you connect with this program.

WHAT OTHER RESOURCES ARE AVAILABLE TO HELP ME FIND WORK?

- VABIR (Vermont Association of Business, Industry and Rehabilitation): VABIR is an independent, not-for-profit agency that works with businesses and people with disabilities to help create job opportunities. VABIR also works with VR to get people with disabilities in job settings. VABIR can help you work on a resume, practice job interview skills, connect you with other people like you who are working or looking for work, and give you other practical advice on how to get a job. VABIR can also refer you to employers with job openings. You can call VABIR at 802-878-1107. VABIR also has representatives who work in many VR offices.
- VCIL (Vermont Center for Independent Living) has a “Benefits to Work” program to assist people who receive disability benefits to go to work and still maintain their benefits. You may contact the program at 800- 639-1522.
- There are also several local private agencies in Vermont who can provide job support services to people with disabilities. Contact your local VR office to find out if there is an agency that can help you.

WHERE CAN I FIND A VR OFFICE?

VR offices are located throughout the state.

Burlington Office

110 Cherry Street, Suite 2-1
Burlington, Vermont 05401-3818
(802) 863-7501 (Voice) | (802) 863-7515 (Fax)
megan.brown@vermont.gov

Barre-Montpelier Office

McFarland State Office Bldg.
5 Perry Street, Ste. 100
Barre, Vermont 05641-4269
(802) 479-4210 (Voice) | (802) 479-4411 (Fax)
erika.bradshaw@vermont.gov

Bennington Office

200 Veterans Memorial Drive, Ste 15
Bennington, Vermont 05201-1998
(802) 447-2781 (Voice)
(802) 447-2809 (Fax)
Karla.Ball@vermont.gov

Brattleboro Office

28 Vernon St., Suite 400
Brattleboro, Vermont 05301-3675
(802) 251-2140 (Voice)
(802) 257-2841 (Fax)
melanie.jones@vermont.gov

Middlebury Office

156 South Village Green
Middlebury, Vermont 05753
(802) 388-4636 (Voice)
(802) 388-5386 (Fax)
sarahjane.kimball@vermont.gov

Morrisville Office

63 Professional Drive
Morrisville, Vermont 05661-8522
(802) 888-5976 (Voice)
(802) 888-0061 (Fax)
Jessica.Glodgett@vermont.gov

Newport Office

100 Main Street, Suite 120
Newport, Vermont 05855-4898
(802) 334-6794 (Voice)
(802) 334-3360 (Fax)
cindy.vincent-goodyear@vermont.gov

Rutland Office

190 Asa Bloomer Building
Rutland, Vermont 05701-9408
(802) 786-8844 (Voice)
(802) 786-5078 (Fax)
francine.faucher@vermont.gov

Springfield Office

100 Mineral Street, Suite 308
Springfield, Vermont 05156-2306
(802) 289-0567 (Voice)
(802) 885-6471 (Fax)
heather.tambling@vermont.gov

St. Albans Office

State Office Building
27 Federal Street, Suite 200
St. Albans, Vermont 05478
(802) 524-7950 (Voice)
(802) 527-5442 (Fax)
raye.mudgett@vermont.gov

St. Johnsbury Office

1016 US Route 5, Suite 4
St. Johnsbury, Vermont 05819
(802) 748-8716 (Voice)
(802) 751-3292 (Fax)
liz.colby@vermont.gov

White River Junction Office

118 Prospect Street, Suite 201
White River Junction, Vermont 05001-2015
(802) 295-8850 (Voice)
(802) 295-8886 (Fax)
Lauren.Bertolini@vermont.gov

CHAPTER EIGHT

CLIENT ASSISTANCE PROGRAM

The Client Assistance Program (CAP) is an independent advocacy program. The program can help you if you are applying for or receiving services from the following agencies:

- Division of Vocational Rehabilitation (VR)
- Vermont Center for Independent Living (VCIL)
- Division for the Blind and Visually Impaired (DBVI)
- Vermont Association of Business, Industry & Rehabilitation (VABIR)
- Vermont Association for the Blind and Visually Impaired (VABVI)
- Supported Employment
- Transition Programs

| Call CAP If You: | CAP Can |
|---|---|
| •Need help applying for services | •Tell you about the services available and help with the process |
| •Have questions or need information | •Tell you about your employment rights under the Americans with Disabilities Act |
| •Have been turned down by any of the above agencies | •Explain your rights and responsibilities |
| •Think things are taking too long | •Help you with appeals |
| •Have trouble communicating with your counselor | •Help you work out problems with your counselor or the agency. |
| •Are not getting services you need. | •Listen to your concerns and recommend changes in agency policies to improve services for everyone. |

Did you know:

- CAP is part of the Disability Law Project of Vermont Legal Aid, Inc.
- CAP services are free and confidential

Contact: 1.800.889.2047

264 N. Winooski Ave.
Burlington VT 05401
Fax: 802.863.7152

56 Main St., Suite 301
Springfield VT 05156
Fax: 802.885.5754

57 North Main St., Suite 2
Rutland VT 05701
Fax: 802.775.0022

177 Western Ave., Suite 1
St. Johnsbury VT 05819
Fax: 802.748.4610

7 Court St.
Montpelier VT 05601
Fax: 802.223.1621

CHAPTER NINE: SPECIAL EDUCATION

WHAT IS SPECIAL EDUCATION?

- Public schools must educate all children through the high school level.
- Some children need to be taught in a different way in order to learn. This is called special education.
- Schools test to see if a child needs special education.
- Schools put together a team that includes parents to plan for special education services.
- Schools must teach children in the “least restrictive environment”: keeping children in the regular school setting as much as possible, while meeting needs.

WHO GETS SPECIAL EDUCATION?

- All children, youth, and young adults (through age 21) with a qualifying disability can receive special education services until they finish high school.
- Infants and toddlers, age birth up until 3, with developmental delays may get “early intervention” services, through the Vermont Family, Infant and Toddler project.
- Starting at age 3 until they start in regular school, children usually get services through an Early Essential Education (EEE) program.
- School-age services are usually provided in the public school, but may be provided in another setting.

HOW DO I GET SPECIAL EDUCATION FOR MY CHILD?

- The school will test to find out if your child has a qualifying disability.
- A parent, guardian, or school can request an evaluation.
- A parent or guardian must consent to tests in writing.
- Tests must be finished no later than two months after consent.

*The school must provide written results of testing. If you don't agree with the test results, you can ask for someone else to do other tests which the school must look at.

WHO DECIDES IF MY CHILD QUALIFIES FOR SPECIAL EDUCATION?

- The school puts together an Evaluation and Planning Team (EPT) to decide whether your child needs special education.
- The EPT team includes the parents or guardian, school staff, and possibly other experts.
- The school must let you know about team meetings so you can plan to attend. You can have a support person or advocate with you.
- The EPT team reviews the tests and decides whether your child needs special education.
- If the EPT team decides that your child needs special education, the school will set up another meeting to plan an IEP (Individualized Education Program). Sometimes these meetings are held right after the EPT meeting.
- If you disagree with the decision of the EPT team you can request mediation, file a complaint with the Commissioner of the Vermont Department of Education or ask for a due process hearing. See below for more information about ways to resolve disagreements with the schools.

WHEN IS MY PERMISSION REQUIRED?

- Your consent is required.
- When your child is tested or retested.
- When your child starts special education.
- Before private information from your child's records is released (in most cases).
- Your consent can be revoked at anytime.
- The school must give you a notice in writing.
- When the school starts, or refuses to start, special education.
- When the school plans to change your child's evaluation, eligibility, special education services, or placement.
- The school must give you full information about your child's program in language that you can understand so that you can make good decisions.
- Written notices must tell you what the school plans to do, what other options they looked at, and say why the school made its decision. It must also tell you what you can do if you disagree with the decision and where you can go for help to understand your rights.

WHAT IF MY CHILD DOES NOT QUALIFY FOR SPECIAL EDUCATION?

- Your child may qualify for other services.
- You may ask for a “reasonable accommodation” for your child’s disability. (For example, a special kind of chair, more time to take a test, special food needs).
- Your child may get a “504 plan,” where the school will change the way some things are done to help your child learn.

WHAT IS AN IEP (INDIVIDUALIZED EDUCATION PROGRAM)?

- The school has 30 days after the evaluation to write an IEP.
- The IEP is a written plan that says what kinds of special education your child will get, who will give the services to your child, when, where and how they will be provided.
- The IEP covers one year and is reviewed annually.
- The IEP team writes the IEP. The IEP team includes the student’s
 - *parent(s) or guardian(s), regular classroom teachers, special education teachers, therapists, and others who may give services to your child, and where appropriate the student.
- The school must tell you about team meetings. You can have someone with you to help you understand what is happening at meetings. You can also have someone there to advocate for you and your child.
- You can ask for an IEP meeting at any time to talk about problems or to ask for changes in the IEP.
- The school will ask you to give your permission for special education to start. If you don’t give permission for the first IEP, your child will not get any special education services.

WHAT IF I DISAGREE WITH THE IEP?

You may ask for a new IEP meeting at any time to ask for changes to the IEP. The team must talk through your requests at the meeting and consider them seriously. The team may decide not to change the IEP or make changes different from the ones you asked for.

- You may ask for mediation to help you and the school talk about your disagreements.
- You may file a complaint with the Commissioner of the Vermont Department of Education.
- You may ask for a due process hearing.

WHAT IF MY CHILD CAN'T LEARN IN A REGULAR SCHOOL?

- If possible, your child should be in a regular classroom or with other students as much as possible.
- If a regular classroom environment does not work (too many distractions, work is too complicated, behavior problems that disrupt the class) your child may spend all or part of the school day in a small group or even have a one-on-one teacher.
- The IEP team decides where your child will be during the school day.
- The IEP team may decide your child should go to a school for students with special needs. If so, the school sets up the program and pays for it.
- If you want a different school, but the IEP team disagrees, you may need a due process hearing to decide whether the school has to pay for the other school or whether you will have to pay for it yourself.
- Some important things to remember if you want to choose a different school:
 - *The local school does not have to give your child the best possible education. It only has to give an “appropriate” education- that is, one that helps your child make reasonable progress in school. If the school has done this, it will not have to pay for a different placement.
 - *You have to tell the school you are moving your child to another school. You can do this at an IEP meeting or at least 10 days before your child moves to the other school. If not, you may not be able to ask for repayment.
 - *If the school decides to test your child before the move to another school, you have to make your child available for the test. If not, you may not be able to ask for repayment.
- Private or independent schools, such as religious schools, may offer some special education services but your child will not get an IEP. The school district where you live may give your child some special education services, but it does not have to.
- If you home school your child, your local school district may give your child some special education services, but it does not have to.

WHAT IF MY CHILD IS SUSPENDED OR EXPELLED FROM SCHOOL?

- If your child breaks school rules and is suspended for 10 days or less, he or she can be punished the same as any other student. But if your child's actions come from a disability, different discipline rules are used to decide how to address the problem.
- If the student is suspended for 10 or more days, the IEP team must meet and the school must consider giving other services to address the problem.
- The team does a "manifestation determination" to see if the behavior problems are disability related. If so, the team writes a behavior plan and the student returns to the original placement unless the team agrees to a change.
- If the student has brought drugs or weapons to school, or has caused serious injury to someone else, the school may keep your child out of the school building for up to 45 days. In that case the school will give services in another setting.
- You may ask for a due process hearing if you disagree with any of these decisions. If the student is out of school, the hearing will happen on a quicker timeline.
- If your child is not on an IEP, but you have asked for special education tests, the special education discipline rules may still apply.

WHAT HAPPENS WHEN MY CHILD IS CLOSE TO GRADUATION?

- The IEP team must plan to move your child from school into adult life. The plans should start in the IEP for the year your child turns 16, and sometimes earlier.
- The plan includes goals for how your child will learn to live independently in the community, including finding work or getting more education.

WHAT HAPPENS WHEN MY CHILD TURNS 18?

- At age 18, all rights related to special education move from the parent or guardian to the student. The student, not the parent, is on the IEP team, can ask for IEP meetings, consent or refuse to consent to tests, or releasing private records. The student can challenge the IEP in a due process hearing. The parent or guardian may continue to be a member of the IEP team at the student's request.

- For some disabled adult students who are unable to make decisions on their own, a court may appoint a legal guardian to make these decisions.

WHAT IF THE SCHOOL AND I CAN'T WORK OUT OUR DIFFERENCES?

- You may ask for mediation. A neutral third person, a mediator, will help you try to resolve your differences. The mediator does not decide which side is correct but helps you and the school to solve the problem together. If you and the school reach an agreement, the mediator puts that agreement in writing. Mediation is confidential and you can stop it at any time. You can ask for mediation by contacting the Vermont Department of Education.
- You may file a complaint with the Commissioner of the Vermont Department of Education. The Commissioner conducts an investigation of your complaint and decides which side is correct. The decision must be in writing.
- You may ask for a due process hearing. In a due process hearing, a neutral person will decide if the school has to give you what you are asking for. The decision must be in writing.

WHAT IS A DUE PROCESS HEARING?

- In the hearing, a hearing officer will listen to both you and the school and decide which side is correct. There will be a written decision saying what should be done to solve the problem.
- The hearing should be held in about two months.
- You will be asked to attend a “resolution session,” which is a meeting to see if you and the school can work out your differences without a hearing. You will also be offered mediation though you are not required to use the mediation option.
- You may have a lawyer help you with the hearing. You may be able to get free or low-cost legal services. You may also be able to win attorney’s fees if the hearing is decided in your favor. You have the right for your child to attend the hearing and for it to be open to the public.
- You must ask for a due process hearing within 2 years of the date the problem with the school happened. If you want to be paid back for placing your child in a different school, you must ask for the hearing no later than 90 days after your child changes schools.

- If you disagree with the results of a due process hearing, you may appeal the decision to a state or federal court. You must file this appeal within 90 days of getting the hearing officer’s decision.
- You can request a due process hearing by filling out a due process hearing form and sending it to the Vermont Department of Education, 219 North Main Street, Suite 402, Barre, VT 05641. You can get the form from the Department’s web site www.education.vermont.gov or by calling 802-479-1255.

WHERE CAN I GET HELP WITH SPECIAL EDUCATION QUESTIONS?

- Your School District’s Special Education Administrator

Every school has a person who runs the special education program and can answer questions. Contact your local school superintendent’s office to find out who to call.

- Vermont Department of Education, Student Support Services The Department has staff that works on special education issues.

Vermont Department of Education
 219 North Main Street, Suite 402,
 Barre, VT 05641
 (802) 828-5114

- Children’s Integrated Services, Part C Early Intervention (Formerly the Family, Infant and Toddler Project)

Children’s Integrated Services provides early intervention services for ages birth to 3 for children with developmental delays.

Ken Schatz, Commissioner
 Department for Children and Families
 280 State Drive, HC 1 North
 Waterbury, VT 05671-1080
 (800) 649-2642

- Vermont Family Network (Formerly VT Parent Information Center and Parent to Parent of VT)

VFN supports and informs families of children with special needs including assisting parents in the special education process.

Vermont Family Network

600 Blair Park Road, Suite 240

Williston, VT 05495-7589

(800) 870-6758

(802) 746-5294 (voice/TTY)

- Vermont Federation of Families for Children’s Mental Health

This group provides support and information on children’s mental health questions.

Vermont Federation of Families for Children’s Mental Health

95 South Main Street

P.O. Box 1577

Williston, VT 05495

(800) 639-6071

(802) 876-7021

- Vermont Educational Surrogate Parent Program

This program addresses educational needs of children in custody or children whose parents cannot be located.

Vermont Agency of Education

Secretary Daniel M. French

219 North Main Street, Suite 402

Barre, VT 05641

(802) 479-1030

- Disability Law Project

The Disability Law Project provides legal support regarding special education and other disability issues.

Disability Law Project District Offices

Chittenden, Franklin, Grand Isle, Addison
counties:

264 North Winooski Avenue, PO Box 1367

Burlington VT 05401

Phone: 802-863-5620/800-747-5022

Washington, Orange, Lamoille counties:

7 Court Street, PO Box 606

Montpelier VT 05601

Phone: 802-223-6377/800-789-4195

Caledonia, Essex, Orleans counties: 177

Western Avenue, Suite 1

St. Johnsbury, Vermont 05819 Phone:

802-748-8721/800-769-6728

Rutland, Bennington counties

57 North Main Street, Suite 2

Rutland VT 05701

Phone: 802-775-0021/800-769-7459

Windsor, Windham counties

57 North Main Street, Suite 301

Springfield VT 05156 Phone:

802-885-5181/800-769-9164

CHAPTER TEN: CIVIL AND INDIVIDUAL RIGHTS

AMERICANS WITH DISABILITIES ACT

TITLE I - EMPLOYMENT

General Rule: No covered entity may discriminate against a qualified individual with a disability because of the disability in regard to:

- job application procedures
- hiring, advancement, or discharge of employees
- employee compensation
- job training,
- other terms, conditions, and privileges of employment.

Definitions:

- Covered entity: an employer, employment agency, labor organization, or joint labor-management committee. Title I applies to employers with 15 or more employees. Does not include the US government or private membership clubs.
- Individual with a Disability: An individual with a physical or mental impairment that substantially limits one or more major life activities; or having a record of such impairment; or being regarded as having such impairment.
- Physical or mental impairment: Includes, but is not limited to, such contagious and non-contagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, traumatic brain injury, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

*An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

- Drug addiction is an impairment under the ADA and discrimination against drug addicts based solely on the fact that they previously illegally used controlled substances is prohibited. Protected individuals include: a) those who have successfully completed a supervised drug rehabilitation program or have otherwise been rehabilitated successfully and are not engaging in current illegal use of drugs; b) individuals who are currently participating in a supervised rehabilitation program and are not engaging in current illegal use of drugs; and c) individuals who are erroneously regarded as engaging in the current illegal use of drugs. Can discriminate against someone for current use of illegal drugs but health services can't be denied to someone based on illegal drug use.
- Major life activities: major life activities include, but are not limited to caring for oneself, performing manual tasks, seeing, hearing, eating, walking, standing, lifting, bending, speaking, learning, reading, concentrating, thinking, communicating and working. Major life activities includes operation of major bodily functions.
- Substantial Limitation of a Major Life Activity: An impairment substantially interferes with a major life activity when the individual's important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people. Temporary mental or physical impairments may be covered.
- Mitigating Measures: Whether the disability is "substantial" shall be looked at without regard to aides or medicines that reduce the disability, except for ordinary eyeglasses and contact lenses.
- Qualified individual with a disability: an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position.

What is Discrimination:

- Limiting, segregating, or classifying a job applicant or employee because of the applicant or employee's disability, in a way that adversely affects his or her employment opportunities or status. Employees with disabilities must be given equal access to whatever health insurance coverage the employer provides to other employees.
- Employing standards, criteria or methods of administration that have the effect of discriminating on the basis of disability.

- Excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association.
- Not making reasonable accommodation. This includes:
 - *Not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability unless making the accommodations would impose an undue hardship;
 - *Denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;
 - *An individual's need for a reasonable accommodation can't enter an employer's decision regarding hiring, firing, promotion, or any other employment decision unless the accommodation would cause undue hardship;
- Using qualification standards, employment tests or other selection criteria that screen out individuals with disabilities unless the standard, test or other selection criteria is job-related for the position in question and consistent with business necessity;
- Failing to select and administer tests concerning employment in the most effective manner to ensure that the test results accurately reflect the skills and aptitude of the applicant or employee rather than reflecting the impairment.
- Retaliation is prohibited: Can't discriminate because someone has opposed a practice or made a charge, testified, or assisted in an investigation, proceeding or hearing under the ADA. Also a violation to coerce, intimidate, threaten, or interfere with any individual who is exercising rights under the ADA.
- Reasonable Accommodation: An employer must provide a reasonable accommodation for the known physical or mental limitations of a qualified applicant or employee unless it can show that the accommodation would pose an undue hardship on the business.
- Definition: A reasonable accommodation is any change in the work environment or the way things are usually done that gives an individual with a disability an equal employment opportunity.

- An employer has an obligation to provide reasonable accommodation to the known disability of an employee or applicant.

- *Where the disability is hidden, the initial burden is on the employee to request a reasonable accommodation. The employee need not use any “magic words” in requesting the accommodation. The request for accommodation triggers the employer’s obligation to participate in the interactive process of determining the appropriate accommodation.

- *If the disability is known and the person is having trouble with the job, an employer may ask an employee whether he or she needs an accommodation.

- *A request for accommodation does not need to be specific.

- *An employer may ask for documentation of the need for accommodation.

- An employer has an obligation to make reasonable accommodations that are job-related, i.e., that specifically assist the individual in performing the duties of a particular job. An employer is not required to provide personal items as accommodations such as eyeglasses or a wheelchair.

- A reasonable accommodation does not need to be the best accommodation available, but it must be an effective accommodation.

- Cost is not the only factor in determining reasonableness. The overall financial resources of the employer are one factor in whether the accommodation is reasonable.

More on Reasonable Accommodation:

- The appropriate reasonable accommodation is best determined through a flexible, interactive process between the employer and the employee or applicant.

- If more than one accommodation is appropriate, the preference of the individual with a disability should be given primary consideration. However, the employer has the ultimate discretion to choose between effective accommodations and may choose the less expensive accommodation.

- *In most cases the ADA’s reasonable accommodation duty does not require employers to disturb seniority systems for people with disabilities.

- Right to Refuse: An employee or applicant with a disability is not required to accept an accommodation. However, if an employee or applicant rejects a reasonable accommodation and, as a result, cannot perform the essential functions of the position, the individual will not be considered a qualified individual with a disability.
- No conflict between assertion of ADA request for reasonable accommodation and statement that person is unable to work for purpose of obtaining Social Security benefits. Social Security does not examine whether reasonable accommodation is possible in employment. Employee will have to explain why she is “unable” to work for SS purposes but “able to work with accommodation” for ADA purposes.

Undue Hardship:

- An employer is not required to provide an accommodation if it will impose an undue hardship on the business.
- Undue hardship is defined as significant difficulty or expense incurred by an employer when considered in light of: the nature and net cost of the accommodation needed; overall financial resources of the employer; type of operation; and impact on operation of business, including other employees.

Medical Examinations and Inquiries:

- Before the conditional job offer:
 - *An employer may not make any pre-employment inquiry about a disability or about the nature or severity of a disability. An employer may not make any medical inquiry or conduct any medical examination prior to making a conditional offer of employment.
 - *An employer may ask a job applicant questions about ability to perform specific job functions as long as these questions are not phrased in terms of a disability. An employer may ask all applicants to describe or demonstrate how they will perform a job, with or without an accommodation.
 - *If an individual has a known disability that might interfere with or prevent performance of job functions, he may be asked to describe or demonstrate how these functions will be performed, with or without an accommodation, even if

other applicants are not asked to do so. However, if a known disability would not interfere with performance of job functions, an individual may only be required to describe or demonstrate how he will perform a job if this is required of all applicants for the position.

*When an applicant has a visible disability or has volunteered information about a disability, the interviewer may not ask questions about the nature of the disability; the severity of the disability; the condition causing the disability; any prognosis or expectation regarding the disability; whether the individual will need treatment or special leave because of the disability.

- After a Job Offer and Before the Applicant Begins Working:

- *An employer may condition a job offer on the results of a medical examination if such an examination is required of all entering employees in the same job category, regardless of disability.

- *At this stage, a medical exam does not have to be job related and consistent with business necessity. An employer may ask disability-related questions and require a medical examination so long as the employer asks the question of all employees entering that job category and the employer keeps confidential any information about disability that the employee provides.

- *If an employer withdraws an offer of employment because the medical exam reveals that the employee does not satisfy certain employment criteria, either the exclusionary criteria must not screen out or tend to screen out individuals with a disabilities or they must be job-related and consistent with business necessity. To show this, the employer must demonstrate that there is no reasonable accommodation that will enable the individual with a disability to perform the essential functions of the job.

- After an Employee Begins Work:

- *An employer cannot ask an employee a disability-related question or require a medical examination unless it is job-related and consistent with business necessity.

- *An employer can make inquiries and require medical exams when there is need to determine whether employee is still able to perform essential functions of the job.

Defenses:

- Job related and consistent with business necessity: Employers may use selection criteria or have employment policies that have a disparate impact when they are job related and consistent with business necessity and the criteria cannot be met with a reasonable accommodation.
- Direct threat: a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.
 - *An employer may require, as a qualification standard, that an individual not pose a direct threat to the health or safety of himself or others.
 - *Determination whether an individual poses a direct threat must be made on a case by case basis based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job; the duration of the risk; the nature and severity of the potential harm; the likelihood that the potential harm will occur; and the imminence of the potential harm.
 - *Consideration of risk must be based on objective factual, medical evidence of the disability involved, and/or direct knowledge of the individual, not on subjective perceptions, fears, patronizing attitudes or stereotypes.
 - *An employer may refuse to hire a worker if the worker's disability would post a direct threat to his own health, even if it poses no threat to the health and safety of others.
 - *An employer still needs to examine if a reasonable accommodation can deal with the direct threat problem.
- Undue hardship: It may be a defense to a charge of discrimination that a requested or necessary accommodation will, in fact, impose an undue hardship on the employer. Determined on a case by case basis.

Drug Testing for Illegal Drug Use:

- An employer may conduct drug testing designed to ensure that an individual who has completed a supervised drug program or who is participating in a rehabilitation program is no longer engaging in the illegal use of drugs. A test to determine the illegal use of drugs is not considered a medical examination.

Enforcement:

- Exhaustion of administrative remedy is required. Must file administrative complaint with Equal Employment Opportunity Commission (EEOC), www.eeoc.gov, or the VT Attorney General's (AG's) Office within 300 days of date of discrimination. Cannot sue in court until administrative remedy has been exhausted. Whether you file with the EEOC or the AG's Office, you can get a right-to-sue letter from the EEOC. This satisfies the exhaustion requirement and you can then file a lawsuit in court. Once the right-to sue letter is issued, you must file in court within 90 days.

Remedies:

- Injunctive relief: an order requiring the other party to refrain from doing or continuing to do a particular act or activity.
- Reinstatement or hiring.
- Back pay, although employee may have an obligation to mitigate or limit his or her losses.
- Other equitable relief as the court deems appropriate.
- Attorney's fees.

VERMONT LAW - FAIR EMPLOYMENT PRACTICES ACT (FEPA)

Prohibits discrimination based on disability in employment. Requires employers to make reasonable accommodation to the structure of a job or in the manner in which a job is performed unless it would impose an undue hardship.

- Applies to all employers who have one or more individuals performing services for it within the state.
- Definition of "handicapped individual" is the same as ADA definition of disability.
- The statute includes working, education, and vocational training as major life activities in addition to caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, and learning.

Penalties and Enforcement under Vermont Law:

- The EEOC or the VT Attorney General's Office enforce FEPA. The EEOC has to defer to

VT AG's Office for 60 days before processing charges of employment discrimination. Can also file complaint in Superior Court. There is no exhaustion requirement.

- Remedies are the same as under the ADA: damages and equitable relief, including restraint of prohibited acts, restitution of wages or other benefits, reinstatement, costs, reasonable attorney's fees and other appropriate relief.

RESOURCES

Equal Employment Opportunity Commission Vermont Attorney General's Office

John F. Kennedy Federal Building

475 Government Center

Boston, MA 02203

www.eeoc.gov | 800-669-4000

800-669-6820 (TTY for Deaf / Hard of Hearing callers only)

844-234-5122 (ASL Video Phone for Deaf Hard of Hearing callers only)

109 State Street

Montpelier, Vermont 05609

802-828-3171 | www.state.vt.us/atg

Disability Rights Vermont

141 Main Street, Suite 7

Montpelier, Vermont 05632

800-834-7890 | www.disabilityrightsvt.org

Disability Law Project of Vermont Legal Aid: www/vtlegalaid.org

Vermont Legal Aid (Burlington)

264 North Winooski Avenue

Burlington VT 05401

Phone: 802.863.5620 | Fax: 802.863.7152

Vermont Legal Aid (Rutland)

57 North Main Street, Suite 2

Rutland VT 05701

Phone: 802.775.0021 | Fax: 802.775.0022

Vermont Legal Aid (Montpelier)

56 College Street, Montpelier VT 05602

Phone: 802.223.6377 | Fax: 802.223.7281

Vermont Legal Aid (St. Johnsbury)

177 Western Avenue, Suite 1

St. Johnsbury VT 05819

Phone: 802.748.8721 | Fax: 802.748.4610

Vermont Legal Aid (Springfield)

56 Main St., Ste.301, Springfield VT 05156

Phone: 802.885.5181 | Fax: 802.885.5754

AMERICANS WITH DISABILITIES ACT

TITLE II GOVERNMENT

General Rule: No qualified individual with a disability may, by reason of their disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by such entity.

Definitions:

- Individual with a Disability: An individual with a physical or mental impairment that substantially limits one or more major life activities; or having a record of such impairment; or being regarded as having such impairment.
- Physical or mental impairment: Includes, but is not limited to, such contagious and non-contagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, traumatic brain injury, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.
- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active
- Drug addiction is an impairment under the ADA and discrimination against drug addicts based solely on the fact that they previously illegally used controlled substances is prohibited. Protected individuals include: a) those who have successfully completed a supervised drug rehabilitation program or have otherwise been rehabilitated successfully and are not engaging in current illegal use of drugs; b) individuals who are currently participating in a supervised rehabilitation program and are not engaging in current illegal use of drugs; and c) individuals who are erroneously regarded as engaging in the current illegal use of drugs. Can discriminate against someone for current use of illegal drugs health services can't be denied to someone based on illegal drug use.
- Major life activities: major life activities include, but are not limited to caring for oneself, performing manual tasks, seeing, hearing, eating, walking, standing, lifting, bending, speaking, learning, reading, concentrating, thinking, communicating and working. Major Life Activities includes operation of major bodily functions

- Substantial Limitation of a Major Life Activity: An impairment substantially interferes with a major life activity when the individual’s important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people. Temporary mental or physical impairments may be covered by Title II - analysis will be on a case-by-case basis taking into consideration the duration or expected duration of the impairment and the extent to which it actually limits a major life activity of the individual.

- Mitigating Measures Must be Taken Into Account: Whether the disability is “substantial” shall be looked at without regard to aides or medicines that reduce the disability, except for ordinary eyeglasses and contact lenses.

- A Public entity: Any state or local government or any department, agency, special purpose district, or other instrumentality of a State or States or local government.

- Qualified individual with a disability: An individual with a disability who, with or without reasonable modifications to rules, policies or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for receipt of services or the participation in programs or activities provided by a public entity.

Prohibited Acts: A public entity, in providing any aid, benefit, or service, may not, on the basis of disability:

- Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
- Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
- Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
- Charge a surcharge to cover costs of auxiliary aids or program accessibility;
- Engage in retaliation against or coercion of an individual with a disability requesting an accommodation.

Direct Threat: A public accommodation is not required to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of the public accommodation if that individual poses a direct threat to the health or safety of others.

- A direct threat is a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids and services.

*In determining whether an individual poses a direct threat to the health or safety of others a public accommodation is required to make an individualized assessment, based on reasonable judgment, that relies on current medical evidence or on the best available objective evidence, to determine: the probability that the potential injury will actually occur, and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

Required Acts:

- Public entities must operate each service, program and activity so that, when viewed in its entirety, it is readily accessible to and useable by individuals with disabilities.
- Public entities must furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate and enjoy the benefits of the program, service or activity. In determining what type of aid or service, a public entity must give primary consideration to the request of the individual.

Defense: Fundamental Alteration: The individual must prove that they are a qualified individual with a disability, and then request the specific modification or accommodation that will work for them. After that the burden shifts to the public entity to demonstrate that making the modification or accommodation would fundamentally alter the nature of the service, program, or activity. A reasonable accommodation should be made unless it would fundamentally alter the nature of the service program, or activity.

Enforcement

- Can file Complaint with Department of Justice (DOJ): Must file within 180 days of discriminatory action. Time for filing can be extended for good cause. DOJ will forward

complaint to appropriate federal agency, if necessary. Federal agency is required to investigate and attempt informal resolution.

- Under Vermont Law, a complaint can be filed with the Human Rights Commission within a year of the discriminatory act.

- *No need to administratively exhaust.

- An individual can file in Federal Court or Vermont Superior Court.

- Statute of limitations: If filing in court, must file within three (3) years of the discriminatory act.

Remedies

- Injunctive relief: An order requiring the other party to refrain from doing or continuing to do a particular act or activity

- *Compensatory damages: Available if plaintiff can establish intentional discrimination.

- Attorney's fees and costs: Available to prevailing party.

VERMONT LAW: DISCRIMINATION; PUBLIC ACCOMMODATION; RENTAL AND SALE OF REAL ESTATE

Prohibits discrimination against people with disabilities in places of public accommodation.

Public accommodations are defined to include all of state and local government.

Enforcement:

- May file a charge of discrimination with the Human Rights Commission (HRC). Human Rights Commission may bring an action in the name of the Commission to enforce Vermont anti-discrimination law. You do not need a lawyer to file.

- May bring an action in Superior Court. You do not need to exhaust HRC process before filing an action in Superior Court.

- Can get compensatory and punitive damages, costs and attorneys fees, and any other appropriate relief.

- Violators can be criminally fined up to \$1000.

RESOURCES

US Department of Justice

950 Pennsylvania Avenue, NW

Washington, DC 20530-0001

Department of Justice Main Switchboard:

202-514-2000

Department Comment Line: 202-353-1555

TTY/ASCII/TDD: 800-877-8339 (or Federal IP

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AMERICANS WITH DISABILITIES ACT

TITLE III- BUSINESSES OPEN TO THE PUBLIC

General Prohibition: No individual may be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any private entity that owns, leases, or operates a place of public accommodation.

Place of Public Accommodation: is a facility, operated by a private entity which falls within at least one of the following categories:

- Places of lodging (inns, hotels, motels) (except for owner occupied establishments renting fewer than six rooms);
- Establishments serving food or drink (restaurants and bars);
- Places of exhibition or entertainment (movie theaters, theaters, concert halls, stadiums);
- Sales or rental establishments (bakeries, grocery stores, hardware stores, shopping centers);
- Service establishments (Laundromats, dry-cleaners, banks, barber shops, beauty shops, travel services, funeral parlors, gas stations, offices of accountants, lawyers, pharmacies, insurance offices, professional offices of health care providers);
- Public transportation terminals, depots, or stations (not including facilities relating to air transportation);
- Places of public display or collection (museums, libraries, galleries);
- Places of recreation (parks, zoos, amusement parks);
- Places of education (nursery schools, elementary schools, secondary, undergraduate, or postgraduate private schools) ;
- Social service center establishments (day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies);
- Places of exercise or recreation (gymnasiums, health spas, bowling alleys, golf courses).

Commercial Facilities

- Facilities whose operations affect commerce, that are intended for nonresidential use by a private entity, that are not:

*Facilities covered or expressly exempted from coverage under the Fair Housing Amendments Act, 42 U.S.C. §3601 et seq.

*Aircraft; or

*Railroad locomotives, railroad freight cars, railroad cabooses, commuter or intercity passenger rail cars.

- All commercial facilities, whether or not they are also places of public accommodation, are subject to the new construction and alteration requirements of subpart D of title III.
- Commercial facilities that are not also places of public accommodation are not subject to the requirements of subparts B and C of title III (e.g., those requirements concerning reasonable modification of policies and procedures, provision of auxiliary aids and removal of barriers in existing facilities).
- The term “commercial facility” includes factories, warehouses, office buildings and other buildings in which employment may occur.

Exemptions:

• Religious entities

• Private clubs

Individual with a disability: An individual with a physical or mental impairment that substantially limits one or more major life activities; or having a record of such impairment; or being regarded as having such impairment.

- Physical or mental impairment: Includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, traumatic brain injury, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.
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- Mitigating Measures Must be Taken Into Account: Whether the disability is "substantial" shall be looked at without regard to aides or medicines that reduce the disability, except for ordinary eyeglasses and contact lenses.

Prohibited Actions:

- Cannot directly or through contract use standards, criteria or methods of administration that have the effect of discriminating or that perpetuate the discrimination of others;
- Cannot deny goods or services to an individual or entity because of that individual's relationship to or association with someone with a disability;
- Retaliation is prohibited: Can't discriminate because someone has opposed a practice or made a charge, testified, or assisted in an investigation, proceeding or hearing under the ADA. Also a violation to coerce, intimidate, threaten, or interfere with any individual who is exercising rights under the ADA;
- Individuals with disabilities must be integrated to the maximum extent appropriate;
- Separate programs, appropriate to the particular individual, are permitted where necessary to ensure equal opportunity;

*Individuals with disabilities cannot be excluded from the regular program or required to accept special services or benefits.

Direct Threat: A public accommodation is not required to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of the public accommodation if that individual poses a direct threat to the health or safety of others.

- A direct threat is a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids and services.

*In determining whether an individual poses a direct threat to the health or safety of others a public accommodation is required to make an individualized assessment, based on reasonable judgment, that relies on current medical evidence or on the best available objective evidence, to determine the probability that the potential injury will actually occur, and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

Maintenance of Operable Working Conditions: Public accommodations are required to maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities under the ADA. Inoperable elevators, locked accessible doors or “accessible routes” that are obstructed by furniture, filing cabinets or potted plants are not usable by individuals with disabilities and are therefore not accessible.

Specific Requirements:

- Eligibility Criteria: A public accommodation may not impose eligibility criteria that screen out or tend to screen out persons with disabilities from fully and equally enjoying any goods, services, privileges, advantages, or accommodations offered to individuals without disabilities, unless it can show that such requirements are necessary for the provision of the goods, services, privileges, advantages, or accommodations.

- Safety: A public accommodation may impose legitimate safety requirements necessary for safe operation. The public accommodation must ensure that its safety requirements are based on real risks, not on speculation, stereotype, or generalizations about

individuals with disabilities. Unnecessary inquiries into the existence of a disability purportedly for reasons of safety are prohibited.

- Surcharges: Public accommodations may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures that are required to provide that individual or group of individuals with the nondiscriminatory treatment required by the ADA .

Reasonable Modifications in Policies, Practices and Procedures:

- General: A public accommodation must reasonably modify its policies, practices and procedures to avoid discrimination unless it can show that making such modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations it provides.

- Service Animals: A public accommodation must modify its policies to permit the use of a service animal by an individual with a disability. Service animal encompasses any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.

- CheckOut Aisles: If a store has check-out aisles, customers with disabilities must be provided with equivalent level of convenience in access to check-out facilities as customers without disabilities. To accomplish this the store must either keep an adequate number of accessible aisles open or otherwise modify its policies and practices.

- Personal Services or Devices: A public accommodation is not required to provide individuals with disabilities with personal or individually prescribed devices, such as wheelchairs, prescription eyeglasses or hearing aids, or to provide services of a personal nature such as assistance in eating, toileting or dressing.

Auxiliary Aides and Services

- General: A public accommodation is required to provide auxiliary aids and services that are necessary to ensure equal access to the goods, services, facilities, privileges, or accommodations that it offers, unless an undue burden or fundamental alteration would result. This obligation extends only to individuals whose impairments substantially limit their ability to communicate.

*Public accommodations are encouraged to consult with individuals with disabilities wherever possible to determine what type of auxiliary aid is needed to ensure effective communication. In many cases more than one type of auxiliary aid or service may make effective communication possible. The final decision as to what measures to take to ensure effective communication is in the hands of the public accommodation so long as the chosen method results in effective communication.

- Limitations and Alternatives: A public accommodation is not required to provide any auxiliary aid or services that would fundamentally alter the nature of the goods or services, facilities, privileges, advantages or accommodations offered, or that would result in an undue burden.
- Undue Burden: Defined as significant difficulty or expense. Factors to be considered include:
 - *The nature and cost of the action needed;
 - »The overall financial resources of the site or sites involved;
 - »The number of people employed at the site;
 - »The effect on expenses and resources; legitimate safety requirements necessary for safe operation, including crime prevention measures;
 - »or any other impact of the action on the operation of the site;
 - *The geographic separateness and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;
 - *If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and
 - *If applicable, the type of operation or operations of any parent corporation or entity including the composition, structure, and functions of the workforce of the parent corporation or entity.

Removal of Barriers:

- General: A public accommodation must remove architectural and communication barriers that are structural in nature in existing facilities when it is readily achievable to do so.

*Architectural barriers are physical elements of a facility that impede access by people with disabilities. Communication barriers that are structural in nature are barriers that are an integral part of the physical structure of a facility, e.g., conventional signage, audible alarm systems. The term “facility” includes all or any part of a building, structure, equipment, vehicle, site, or other real or personal property. Both permanent and temporary facilities are subject to the barrier removal requirements.

•Readily Achievable: Means easily accomplished and able to be carried out without much difficulty or expense. Determining if barrier removal is readily achievable involves a case-by-case analysis. Factors to be taken into consideration include:

*The nature and cost of the action needed;

*The overall financial resources of the site or sites involved; the number of people employed at the site; the effect on expenses and resources; legitimate safety requirements necessary for safe operation, including crime prevention measures; or any other impact of the action on the operation of the site;

*The geographic separateness and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;

*If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

*If applicable, the type of operation or operations of any parent corporation or entity including the composition, structure, and functions of the workforce of the parent corporation or entity.

•Examples of modifications that may be readily achievable:

*Installing ramps;

*Making curb cuts in sidewalks;

*Repositioning shelves;

*Rearranging tables, chairs, vending machines, display racks, and other furniture;

*Repositioning telephones;

*Adding raised markings on elevator control buttons;

- *Installing flashing alarm lights;
- *Widening doors;
- *Installing offset hinges to widen doorways;
- *Eliminating a turnstile or providing an alternative accessible path;
- *Installing accessible door hardware;
- *Installing grab bars in toilet stalls;
- *Rearranging toilet partitions to increase maneuvering space;
- *Insulating lavatory pipes under sinks to prevent burns;
- *Installing a raised toilet seat;
- *Installing a full length bathroom mirror;
- *Repositioning the paper towel dispenser in the bathroom;
- *Creating designated accessible parking spaces;
- *Installing an accessible paper cup dispenser at an existing inaccessible water fountain;
- *Removing high pile, low density carpeting; or
- *Installing vehicle hand controls.

•Alternatives to Barrier Removal: When a public accommodation can demonstrate that the removal of barriers is not readily achievable, the public accommodation must make its goods and services available through alternative methods if such methods are readily achievable.

•Seating in Assembly Areas: Public accommodations are required to remove barriers to physical access in assembly areas such as theaters, lecture halls, and conference rooms with fixed seating. If it is readily achievable to do so, public accommodations that operate places of public assembly must locate seating for individuals who use wheelchairs so that it:

- *Is dispersed throughout the seating area;
- *Provides line of sight and choices of admission prices comparable to those offered to the general public;
- *Adjoins an accessible route for emergency egress; and
- *Permits people who use wheelchairs to sit with their friends or family.

If it is not readily achievable for auditoriums/theaters to allow individuals who use wheelchairs to sit next to accompanying family members or friends, the public

accommodation may meet its obligation by alternative methods such as providing portable chairs for use by accompanying family member or friends.

Examinations and Courses: A private entity that offers examinations and courses related to application, licensing, certification, or credentialing for secondary or post-secondary education, professional or trade purposes is required to offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

Transportation Barriers: Public accommodations that provide transportation to their clients or customers must remove barriers to the extent that it is readily achievable to do so. The activities of public accommodations that are primarily engaged in the business of transporting people are covered under separate regulations issued by the Department of Transportation.

Building Accessibility

New Construction: All newly constructed places of public accommodation and commercial facilities must be readily accessible to and usable by individuals with disabilities to the extent that it is not structurally impracticable. Cost is not a defense to new construction requirements.

- New construction requirements apply to any facility:
 - *first occupied after January 26, 1993; or
 - *for which the last application for a building permit or permit extension is certified as complete after January 26, 1992; or
 - *where certification of completion of applications is not required, the date when the last application for a building permit or permit extension is received by the government. A building occupied before January 26, 1993 is not covered by the new construction requirements of the ADA.
- When a commercial facility is located in a home, that portion used exclusively as a commercial facility as well as the portion used both as a commercial facility and for residential purposes are covered by the new construction and alteration requirements.

*Structurally impracticable: means that unique characteristics of the land prevent the incorporation of accessibility features in a facility. The new construction requirements apply except to the extent that the private entity can demonstrate that it is structurally impracticable to meet specific requirements.

*Elevator Exemption: Elevators are not required in facilities under three stories or with fewer than 3000 square feet per floor unless the building is a shopping center or mall, professional office of a health care provider, public transit station, or airport passenger terminal.

Alterations: Alterations in places of public accommodation and commercial facilities begun after January 26, 1992, must be readily accessible to and usable by individuals with disabilities to the maximum extent feasible.

- An alteration is any change that affects usability. It includes remodeling, renovation, rearrangements in structural parts, and changes or rearrangements of walls and full weight partitions. Normal maintenance is not an alteration unless it affects usability.
- Where the nature of the existing facility makes it virtually impossible to fully comply with all applicable accessibility standards, the alteration must provide the maximum feasible physical accessibility.
- Path of Travel: When an alteration is made to a primary function area, there must also be an accessible path of travel from the altered area to the entrance, restrooms, telephones and drinking fountains serving the area. Alterations to provide an accessible path of travel are required to the extent that they are not “disproportionate” to the cost of the original alteration.
- Elevator Exemption: Elevators are not required to be installed during alteration in facilities under three stories or with fewer than 3000 square feet per floor unless the building is a shopping center or mall, professional office of a health care provider, public transit station, or airport passenger terminal. Note: “shopping center or mall” is defined differently for alterations than it is for new construction. 28 C.F.R. §36.404(1) and (2). Elevators are not required when the cost of installing them would exceed 20% of the cost of the original alteration.

- Historic Preservation: Alterations to historic properties must comply, to the maximum extent feasible, with the historic property provisions of the ADAAG found at 28 C.F.R. part 36, Appendix A, § 4.1.7. Alterations should be done in full compliance with the alterations standards for other types of buildings. However, if following the usual standards would threaten or destroy the significance of a feature of the building, the alternative standards may be used. If complying with the minimal alternative requirements would threaten or destroy the historic significance, structural changes need not be made and alternative methods can be used to provide access such as providing auxiliary aids or modifying policies.

Enforcement

Title III permits a private cause of action for injunctive relief and enforcement by the U.S. Attorney General. Injunctive relief includes an order to alter facilities to make them readily accessible to and useable by individuals with disabilities, the provision of an auxiliary air or service, modification of a policy or provision of alternative methods.

- Private Cause of Action: Any person who is being subjected to discrimination on the basis of disability or who has reasonable grounds for believing that such person is about to be subjected to discrimination, may institute a civil action for preventive relief. Court may permit Attorney General (AG) to intervene if s/he certifies the case if of general public importance.

- *Relief Available: Injunctive relief - Private plaintiff's are entitled to equitable and injunctive relief. Equitable relief - may include an order not to discriminate, to institute and maintain a non- discrimination policy, and to post the policy.

- Attorney's fees and costs may be awarded.

- Exhaustion of administrative remedies: is not required in Vermont. In some jurisdictions, exhaustion may be required.

- *Statute of Limitations: In Vermont, statute of limitations is 3 years.

- Enforcement by U.S. Attorney General: AG may investigate complaint of discrimination and initiate compliance review. AG may file civil suit in federal district court if s/he has a reasonable cause to believe that any person or group of persons is engaged in pattern or practice of discrimination or if discrimination against a person or group of persons raises an issue of general public importance.

RESOURCES

US Department of Justice

950 Pennsylvania Avenue, NW

Washington, DC 20530-0001

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ACCESS TO MEDICAL RECORDS

- A record of your treatment is kept by the medical and mental health providers involved with your treatment.
- Your records are confidential and only you have the right to give permission to another person to look at them.
- If you are unable to act in your own behalf a court may appoint a guardian to protect your interests and rights including the release or retention of records.
- You have the right to see your records upon request and to receive a copy for free or at cost based on current per page copy cost.
- You have the right to protect the confidentiality of your records by refusing to give permission or to sign forms that allow others to see your records.
- All medical or mental health information about you is confidential and service providers may not discuss that information with others without your permission.
- This includes discussions between your doctor, therapist and other professionals and friends, family, advocates, other residents where you live, or clients/patients where you are receiving treatment.
- There are, however, certain legal circumstances that may affect your right to confidentiality.
- If you become involved in a child custody case where your mental health as a parent is questioned and you wish to pursue the case, you may be required to release certain parts of your mental health records as part of the court proceedings.
- If you are a prosecuting witness in a criminal case and you wish to testify the defendant may ask you to present your mental health records in order to call into question your believability.
- However, under most circumstances your records are confidential. Often only a judge or his/her appointee will look at these records to decide whether anything contained in them might be helpful to the defendant.
- Your records are not confidential in a mental health proceeding for involuntary commitment to a hospital; however, these records are sealed by the court and are not available to the public. Since the law is generally in a state of change, you should consider consulting an attorney if you have any concerns or questions regarding the confidentiality of your records.

RESOURCES

Disability Rights Vermont

800-834-7890 | www.disabilityrightsvt.org

Medical Practice Board

Phone: 802-657-4220 | Fax: 802-657-4227

US Department of Justice

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www.justice.gov

Office of Professional Regulation

Vermont Secretary of State

Licensing Administrator:

802-828-1501 / 802-828-2808

<https://www.sec.state.vt.us/>

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Without the hard work of the staff from the following organizations this publication would not have been possible.

Disability Rights Vermont

800-834-7890

www.disabilityrightsvt.org

Vermont Legal Aid Legal

Services Law Line

Disability Law Project 800-889-2047

www.vtlegalaid.org/

Brain Injury Association of Vermont

1-877-856-1772

www.biavt.org/

State of Vermont TBI Program

802-244-6850

www.ddas.vermont.gov/programs

