

STATE OF VERMONT
AGENCY OF HUMAN SERVICES

DCF

Department for Children and Families

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FROM: Nicole Tousignant, Senior Policy and Operations Director **DATE:** March 31, 2022
Economic Services Division

SUBJECT: Transitional Housing Program Emergency Rules

CHANGES ADOPTED EFFECTIVE April 1, 2022

These emergency rules are necessary to establish a Transitional Housing Program as required by 2022 Acts and Resolves No. 83, Section 54(c)(1).

The purpose of the Transitional Housing Program is to offer more stability to households experiencing homelessness. The Transitional Housing Program will provide financial assistance to eligible households for up to 18 months in the form of direct monthly payments to motel and hotel owners who have executed an Occupancy Agreement with an eligible household. Eligible households include households experiencing homelessness category one or two as defined by the Department of Housing and Urban Development (HUD) with income at or below 80% of the Area Median Income (AMI) in the town in which the household is seeking housing. Recipients of Transitional Housing Program assistance must participate in Coordinated Entry - the system to refer and connect households to housing assistance – to find long term housing. The Transitional Housing Program will be funded by the federal Emergency Rental Assistance Program (ERAP) and will conform to all federal law and guidance governing ERAP.

Emergency Rulemaking Process

The Department filed this emergency rule with the Legislative Committee on Administrative Rules (LCAR) and the Secretary of State's Office on March 31, 2022.

The emergency rule is posted on the DCF website at <http://dcf.vermont.gov/esd/rules>.

To get more information about the Administrative Procedures Act and the rules applicable to state rulemaking go to the website of the Office of the Vermont Secretary of State at:

<https://sos.vermont.gov/secretary-of-state-services/apa-rules/>

For information on upcoming hearings before the Legislative Committee on Administrative Rules go to the website of the Vermont Legislature at: <https://legislature.vermont.gov/committee/detail/2022/39>

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TH-100 Purpose and Statutory Authority

The purpose of the Transitional Housing Program is to offer more stability to households experiencing homelessness. The Transitional Housing Program provides financial assistance to eligible households in the form of monthly housing payments secured through an Occupancy Agreement between motel owners and eligible households with transitional housing needs that cannot be relieved without the Department's intervention.

Transitional Housing Program participants are considered homeless and must work with a housing navigator to secure permanent housing. Participants must participate in the coordinated entry process to access housing resources for people experiencing homelessness. Participants' eligibility for permanent housing programs and housing navigation services depends on the requirements of the specific program or service.

Nothing in these rules supplants or is intended to supplant any requirements of the Licensed Lodging Establishment Rule.

The Transitional Housing Program will conform to federal requirements of the Emergency Rental Assistance Program (ERAP). Any conflict between these rules and the federal ERAP requirements shall be resolved in favor of the federal law and guidance.

Transitional Housing assistance does not supplant the housing assistance provided by the General Assistance Program. Applicant Households who are eligible for Transitional Housing assistance are ineligible for housing assistance provided by the General Assistance Program.

The Transitional Housing Program will end when funding under the federal ERAP is no longer available. Eligible households will not receive any further Transitional Housing Assistance after that time, regardless of the number of months of assistance the household has received.

These Rules were adopted pursuant to 2022 Acts and Resolves No. 83, Sec. 54 (c)(1).

TH-101 Definitions

The following definitions apply to the terms used in these rules:

1. "Applicant Household" means the individual(s) applying for transitional housing assistance for their own need and for the needs of those who live with them in Vermont. The Applicant Household consists of all adults who will be residing in a unit together. The Applicant Household must include at least one individual age 18 or older, unless emancipated (see "Emancipated Minor" below).
2. "Area Median Income" means the income limits established and published by U.S. the Department of Housing and Urban Development (HUD) on an annual basis. Income limits are adjusted for household size.
3. "Coordinated Entry" means the system established by Vermont's HUD jurisdiction Continuum of Care to ensure individuals experiencing a housing crisis are quickly identified, assessed, referred, and connected to housing assistance based on the individual's strengths and needs.
4. "Department" means the Department for Children and Families.

5. "Eligible household" means a household of one or more individuals that qualifies for transitional housing assistance.
6. "Emancipated Minor" means an individual under age 18 who is: (a) emancipated by judicial decree under the laws of any state; (b) married; or (c) in active military service.
7. "Emergency Rental Assistance" or "ERAP" means the federal program established by section 501 of subtitle A of title V of division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260), and section 3201 of the American Rescue Plan Act of 2021 (Public Law 117-2). ERAP is subject to guidance provided by the US Department of the Treasury on its website: <https://home.treasury.gov/policy-issues/cares/emergency-rental-assistance-program>.
8. "Household Income" means the gross income from all sources of all adult members of the Applicant Household minus any applicable adjustments for purposes of reporting under Internal Revenue Service Form 1040 series for individual federal annual income tax purposes
9. "Monthly Benefit" means a minimum of one (1) day to a maximum of thirty-one (31) days in a given calendar month in which an Applicant Household or participant has utilized ERAP funding for transitional housing assistance.
10. "Motel" means a motel, hotel or other lodgings approved by the Department and subject to the Licensed Lodging Establishment Rule.
11. "Occupancy Agreement" means a signed written agreement between the Applicant Household and a motel owner that provides for the monthly occupancy of a unit by the Applicant Household. The minimum required provisions of an Occupancy Agreement are established by these Rules.
12. "Occupant" means an individual who rents a unit from a motel owner pursuant to an Occupancy Agreement.
13. "Participant" means a recipient of transitional housing.
14. "Transitional Housing" means assistance to provide housing for up to 18 months, funded through the federal Emergency Rental Assistance Program.
15. "Unit" means the premises in a motel that are or will be occupied by an Applicant Household or eligible household pursuant to an Occupancy Agreement.
16. "Vermont Resident" means an individual who is physically present in Vermont with the intent to establish a permanent residence within the state.

TH-102 Eligibility Criteria

To be eligible for the Transitional Housing Program, an Applicant Household must:

1. be a Vermont resident;

2. enter into an Occupancy Agreement with a motel owner who is willing to participate in the Transitional Housing Program and follow all the terms of TH-108;
3. meet the income eligibility requirements under TH-107;
4. not have exceeded the 18-month limit on Emergency Rental Assistance;
5. be experiencing homelessness category one or two as defined by HUD in 24 C.F.R. § 578.3, resulting in housing in a motel as the only option;
6. have either: experienced some financial hardship due, directly or indirectly, to the COVID-19 pandemic (for example, experiencing a loss of income, experiencing significantly increased expenses, or being unable to find or keep a job); or qualify for unemployment benefits; and
7. have not applied for and/or received any other federal funding to pay for expenses covered under ERAP. The assistance provided through ERAP may not be applied to costs that have been or will be reimbursed under any other federal assistance program.

TH-103 Caretakers Living with the Applicant Household

Caretakers and essential persons residing with a child or member of the Applicant Household as a reasonable accommodation are not included in the Applicant Household.

TH-104 Application Process

All persons interested in applying for transitional housing shall be granted the opportunity to do so.

All members of the Applicant Household, or their authorized representatives, must complete and sign the application. The application must include income information for all members of the Applicant Household and a signed attestation of eligibility under TH-102.

All members of the Applicant Household, or their authorized representative(s), must complete an interview with a representative of the Department.

The interview may be completed either in person or by phone.

Failure to submit a completed application promptly shall not be the sole reason for the Department to deny assistance unless the Applicant Household does not cooperate in verification.

TH-105 Verification

The Applicant Household is the primary source of information to establish eligibility under ERAP. The Applicant Household must completely and accurately furnish all necessary information and give the Department permission to obtain information from other sources.

Verification of income is required.

Verification may be required for any other information that affects eligibility or the amount of benefits, if questionable.

The Applicant Household may refuse to: (1) give the Department information, (2) submit required proof, or (3) allow the Department to contact others in connection with the application. However, an Applicant Household's refusal to provide information or access to the information necessary to establish eligibility will result in denial of the application. Additionally, if an Applicant Household willfully misrepresents the household's circumstances, the application will be denied. Willful misrepresentation may also result in legal action for fraud under 33 V.S.A. § 141 and termination of benefits if the misrepresentation is discovered after the transitional housing benefits are granted. Department staff will make every effort to help Applicant Households understand this provision and the potential consequences of refusing access to necessary information or of willful misrepresentation.

Verification and supporting documentation may be provided by:

1. Dropping it off at a district office;
2. Mailing it to the Department;
3. Uploading it using the Department's website [find instructions to use the uploader at <https://dcf.vermont.gov/doc-uploader>];
4. Allowing the Department representative to confirm the information with a phone call; or
5. Any other method permitted by the Department.

TH-106 Action on Application

The Department will decide whether an Applicant Household qualifies for transitional housing once a completed, signed application, with the necessary verification, is submitted and the application has been interviewed. After this, the Department will:

1. Review the information;
2. Make a decision; and
3. Notify the Applicant Household of the decision;
 - a. If the application is approved, verbal and written notice will be given. The notice will include:
 - i. Number of months approved;
 - ii. The check-in date at the motel or transitional housing unit;
 - iii. The amount of monthly assistance; and
 - iv. The date to reapply for transitional housing.

- b. If the application is denied, the Department will provide written notice, which must include the specific reason(s) for denial.

TH-107 Income Eligibility

To receive transitional housing, the Applicant Household must have a gross monthly Household Income at or below 80% of the Area Median Income of the town in which the Applicant Household is seeking housing.

When determining income for the last 30 days, the 30-day period ending on the day prior to the date of application is used.

TH-108 Occupancy Agreement

To receive transitional housing, Applicant Household and motel owners must sign an Occupancy Agreement, which shall require a one-month minimum right to occupy the premises.

The Applicant Household and motel owner may use an Occupancy Agreement form supplied by the Department. However, the Department will only pay for transitional housing if the Occupancy Agreement contains all the following terms:

1. A one-month minimum term, renewable upon agreement of the Owner and Occupant(s).
2. The Owner's agreement to comply with terms of the Licensed Lodging Establishment Rule.
3. No financial requirement the Occupant(s) to use the unit other than the monthly rent paid by the Department.
4. The Occupant(s) has the right to remain in the unit under the terms of the Occupancy Agreement if the property is sold by Owner.
5. The Owner shall provide heat, hot water, electricity, trash removal, and any other utilities the Owner provides to users of other units in the motel or facility.
6. The notice of termination must be given by the 10th of the calendar month if Owner wants the Occupant(s) to leave the property by the end of that same month. If Owner gives notice of termination after the 10th of the month, the Occupant(s) may remain in the unit until the last day of the calendar month following the month in which notice was given. [Example: if an Owner gives notice to an Occupant(s) on September 5, the Occupant(s) must leave the premises by September 30. But if the Owner gives the Occupant(s) notice to vacate on September 11 or later, the Occupant may remain on the premises until October 31].
7. A provision stating whether pets are permitted.
8. A provision stating whether parking is provided for the Occupant(s).
9. The name and telephone contact information for the Applicant Household to call for maintenance and repairs to the unit.
10. The Owner must provide 24-hour notice to the Occupant(s) before entering the unit, except in cases of emergency or to provide housekeeping services as required by the Licensed Lodging Establishment Rule.
11. The Occupant(s) may not sublet the property.

12. Only Occupants listed on the Occupancy Agreement provided to the Department are permitted to stay in the room for more than 72 hours a month.
13. Weekly inspection by Owner of all fire extinguishers and smoke detectors to ensure that they are fully charged and operational.
14. The Occupancy Agreement is void if the occupant is not eligible for transitional housing.
15. The Owner shall have the right to terminate the Occupancy Agreement if the Occupant(s) vacates or abandons the premises. In such case, the Owner may remove all belongings, including any personal property, from the premises only after the Owner makes a good faith attempt to contact the Occupant(s) and verify that they will not be returning to the motel.
16. The Owner must accept a security deposit paid on behalf of the Occupant(s) through the Transitional Housing Program and that the security deposit will be the sole source of reimbursement for repairs to the property.
17. The Owner shall return the security deposit directly to the Occupant(s), minus any portion retained for repairs caused by the Occupant, except ordinary wear and tear, if the Occupant(s) lived in the unit for at least four months and provided requisite notice before vacating the premises.

TH-109 Payment Process

The Department will make payments on behalf of eligible households directly to motel owners on a monthly basis.

Payments by the Department to a motel owner will begin only after (1) the Applicant Household has executed an Occupancy Agreement with the motel owner, and (2) the motel owner has completed all the attestations required by TH-117.

An Occupancy Agreement must be approved by the Department before payments begin. If a motel owner refuses to participate in the Transitional Housing Program, the Department will refer the Applicant Household to Vermont Emergency Rental Assistance Program.

TH-110 Security Deposit

The Department will provide a security deposit to the motel on behalf of the eligible household.

Motel owners must return the security deposit to the Department if the household occupied a living unit for fewer than four months. The security deposit must be returned to the Department within 30 days of termination of the Occupancy Agreement if there are no documented damages to the unit. The motel owner must provide the Department with pictures of the damages and the estimated cost of repair within two weeks of the Occupant vacating the motel if the motel owner intends to retain all or part of the security deposit to pay for repairs.

Motel owners must return the security deposit to the Occupant after termination of the Occupancy Agreement if there are no documented damages to the unit and if the Occupant occupied a unit for a minimum of four months.

TH-111 Calculation of ERAP Monthly Eligibility

Participants may obtain up to a lifetime maximum 18 months of Transitional Housing. If a participant uses ERAP funding for only one day in a calendar month, that usage counts as a “monthly benefit” for purposes of calculating the 18-month maximum.

When members of the Applicant Household have previously received ERAP, the household’s remaining months of eligibility for transitional housing will be determined based on the member of the household with the most months of Transitional Housing assistance received.

TH-112 Provisional Housing for Homelessness Category 1 Applicant Households

The Department will pay for up to 28 days of housing in a motel, on a daily basis, for Applicant Households who:

1. are not living in a shelter or General Assistance Emergency Housing at the time of application for transitional housing, and when shelter space is unavailable; and
2. belong to HUD homelessness category 1.

TH-113 Continuing Eligibility Review

The Department must review an eligible household’s eligibility for transitional housing assistance every 90 days. At the time of review, the eligible household must report any changes in members of the household or household income and provide the Department with verification of a current Occupancy Agreement.

TH-114 Coordinated Entry

Eligible households must participate in the Coordinated Entry process to find long term housing. Eligible households without good cause for not participating in the Coordinated Entry process to find long term housing will be ineligible for further transitional housing assistance at the time of review. Good cause includes: disability or medical condition rendering the adult members of the household unable to participate in the Coordinated Entry process; households that have already secured permanent housing; and other circumstances as determined by the Department.

TH-115 Persons Difficult to House

The Department, in its sole discretion, may elect to make a one-time payment, in addition to the security deposit, to a motel owner to secure housing for an eligible household if, during the preceding 12 months, a member of the household was:

1. evicted (including being refused continued lodging due to failure to abide by the terms of the Occupancy Agreement);
2. aged out of foster care or similar arrangements; or
3. convicted of a criminal offense or released from incarceration.

TH-116 Rehousing

The Department will help eligible households refused continued lodging due to failure to abide by the terms of Occupancy Agreement obtain another Occupancy Agreement. Any additional Occupancy Agreements must be obtained by the eligible household without assistance from the Department. In extenuating circumstances, as determined by the Department, the Department may help in obtaining subsequent Occupancy Agreements for households refused continued lodging for failure to abide by the terms of an Occupancy Agreement.

If, through no fault of the eligible household, a motel owner is no longer willing to provide housing to the household or the household is otherwise refused continued lodging, the Department will help the household obtain another Occupancy Agreement.

The Department cannot guarantee that it will be able to find another owner who will agree to enter into an Occupancy Agreement with the eligible household.

TH-117 Motel Owner Participation

A motel owner must complete an attestation agreeing to the following conditions in order to participate in the Transitional Housing Program:

1. The owner must accept payment directly from the Department on behalf of an Applicant Household;
2. The owner must return or retain the security deposit in accordance with rule TH-110; and
3. The owner must return to the Department any payments as required by TH-120.

TH-118 Prioritization

If there is limited motel capacity, the Department will prioritize applications with: (1) incomes less than 50 percent of area median income; or (2) households with one or more individuals that have not been employed for the 90-day period preceding the date of application.

TH-119 Referral to the Vermont Emergency Rental Assistance Program (VERAP)

The Department will refer Applicant Household households that do not meet the eligibility criteria for participation in the Transitional Housing Program (for example, households with a signed agreement that does not comply with rule TH-108, households entering into agreements with motel owners who refuse to participate in the program) to the Vermont Emergency Rental Assistance Program.

TH-120 Recoupment

A motel owner must return transitional housing assistance payments to the Department in the following cases:

1. Payments are made in error (for example, the household is no longer eligible for transitional housing assistance);
2. Payments are found to be a duplicate payment with another ERAP program; and
3. The eligible household had to exit the room due to the motel owner's failure to comply with the Licensed Lodging Establishment Rule.

TH-121 Notice and Appeal

The Department shall provide notice to all Applicant Households of their right to appeal to the Human Services Board for a fair hearing concerning the Department's actions or inactions. The notice will inform the Applicant Household of their rights and the procedures applicable to such appeals.

TH-122 Severability

If any part of these Rules is held invalid by a court of competent jurisdiction, the invalidity shall not be construed to render the remaining parts of the Rules invalid.