

# Administrative Rule on Agency Designation

Draft 2 – Spring 2024

As submitted to the Secretary of State  
on 5/23/24 for public comment

The deadline for public comment is July 17, 2024, 4:30 pm. Comments  
can be submitted, via email, to  
[AHS.DAILDDSDSOCPRegulations@vermont.gov](mailto:AHS.DAILDDSDSOCPRegulations@vermont.gov).

A public hearing is scheduled for July 10, 2024, from 10 am-12 pm, at the  
Waterbury State Office Complex (280 State Drive, Waterbury Vermont).  
A virtual option is available.

# Designated Agencies Rule

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## **1.0 Authority**

**1.1** This rule is adopted pursuant to 18 V.S.A. §§ 8907, 8911(b), 8913, 8726(b), 8730, and 8731(c).

## **2.0 Purpose**

**2.1** This rule establishes the requirements for the designation of nonprofit agencies (“Designated Agencies”) by the Agency of Human Services (AHS) to provide community mental health and intellectual/developmental disability services within distinct geographic areas of Vermont. Additionally, this rule establishes the obligation of “Specialized Service Agencies” by AHS to provide either community mental health or intellectual/developmental disability services within the State.

**2.2** AHS will review this rule annually and update its content, as deemed necessary by AHS, to promote alignment with nationally recognized best practices, state initiatives advancing quality and equity in care delivery, and all applicable state and federal laws.

## **3.0 Definitions**

**3.1** “Adverse benefit determination” means any of the following:

3.1.1 Denial or limited authorization of a requested service, including determinations based on the type or level of service, requirements of medical necessity, appropriateness, setting, or effectiveness of a covered service,

3.1.2 Reduction, suspension, or termination of a previously authorized service,

3.1.3 Denial, in whole or in part, of payment for a service,

3.1.4 Failure to provide services in a timely manner, as defined by the Agency of Human Services,

3.1.5 Failure to act within timeframes regarding standard resolution of grievances and appeals,

3.1.6 Denial of a beneficiary's request to obtain services outside the network,

3.1.7 Denial of a beneficiary’s request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other beneficiary liabilities."

**3.2** “Agency” means a Designated Agency (DA) or a Specialized Service Agency (SSA).

- 3.3** “Board” means the Board of Directors (or equivalent) of an Agency.
- 3.4** “Catchment Area” means a Designated Agency’s geographic service area, as determined by the Commissioner of DMH and/or the Commissioner of DAIL.
- 3.5** “Certification” means the process by which DAIL’s Developmental Disabilities Services Division (DDSD) determines whether a provider meets minimum standards to provide publicly funded supports or services to people with intellectual/ developmental disabilities and/or their families. Certification and designation are interchangeable terms for the purposes of DDSD.
- 3.6** “Commissioner” means either the Commissioner of Mental Health (DMH) or the Commissioner of Disabilities, Aging, and Independent Living (DAIL), as indicated. “Commissioners” refers to both collectively.
- 3.7** “Complaint” means the same as “Grievance” below, with the exception that it can be resolved in one interaction with the initial staff receiving the issue.
- 3.8** “Day” means calendar day, not business day, unless otherwise specified.
- 3.9** “Department” means the Department of Disabilities, Aging and Independent Living (DAIL), or the Department of Mental Health (DMH), as indicated. “Departments” means both DAIL and DMH collectively.
- 3.10** “Developmental Disability” (DD) means an intellectual disability or an autism spectrum disorder which occurred before age 18 and which results in significant deficits in adaptive behavior that manifested before age 18.
- 3.10.1 Temporary deficits in cognitive functioning or adaptive behavior as the result of severe emotion disturbance before age 18 are not a developmental disability.
- 3.10.2 The onset after age 18 of impaired intellectual or adaptive function due to drugs, accident, disease, emotional disturbance or other causes is not a developmental disability.
- 3.11** “Disclosed individual” means an individual who openly discloses their disability to the Agency.
- 3.12** “Disability” means, with respect to an individual:
- 3.12.1 A physical or mental impairment, including alcoholism and substance abuse, as defined by the Americans with Disabilities Act, that substantially limits one or more of the major life activities of the individual; or
- 3.12.2 A record of such an impairment; or
- 3.12.3 Being regarded as having such an impairment.

**3.13** “Family member” means an individual who is related to a person with a disability by blood, marriage, civil union, or adoption, or considers themselves to be family based upon bonds of affection, and who currently shares a household with the individual with a disability or has, in the past, shared a household with that individual. For the purposes of this definition the phrase, “bonds of affection” means enduring ties that do not depend on the existence of an economic relationship. See the section on Individual Rights for limitations on family member participation.

**3.14** “Grievance” means an expression of dissatisfaction about any matter that is not an adverse benefit determination, including an individual’s right to dispute an extension of time proposed by the Medicaid Program and the denial of a request for an expedited appeal. Possible subjects for grievances include, but are not limited to, the quality of care or services provided, aspects of interpersonal relationships such as rudeness of a provider or employee, or failure to respect the member’s rights.

**3.15** “Individual” or “Individual with Lived Experience” means a person who is, or was, eligible to receive services from an Agency because of their disability.

**3.16** "Individual Appeal" means an internal review by the Medicaid Program of an adverse benefit determination."

**3.17** “Intellectual Disability” defined.

3.17.1 Intellectual disability means significantly sub-average cognitive functioning that is at least two standard deviations below the normative comparison group. On most tests, this is documented by a full-scale score of 70 or below, or up to 75 or below when taking into account the standard error of measurement, on an appropriate norm-reference standardized test of intelligence and resulting in significant deficits in adaptive behavior manifested before age 18.

3.17.2 Intellectual disability includes severe cognitive deficits which result from brain injury or disease if the injury or disease resulted in deficits in adaptive functioning before age 18.

**3.18** “Local Community Services Plan,” means the plan required by 18 V.S.A. § 8908 which describes the methods by which an Agency will provide those services. This was previously referred to as a Local System of Care Plan.

**3.19** “Medicaid Program” means:

3.19.1 The Department of Vermont Health Access (DVHA) in its managed care function of administering services, including service authorization decisions, under the Global Commitment to Health Waiver (“the Waiver”);

3.19.2 A Department within the Vermont Agency of Human Services (AHS) with which DVHA enters into an agreement delegating its managed care

functions including providing and administering services such as service authorization decisions, under the Waiver;

3.19.3 A Designated Agency or a Specialized Service Agency to the extent that it carries out managed care functions under the Waiver, including providing and administering services such as service authorization decisions, based upon an agreement with Department within AHS; and

3.19.4 Any subcontractor performing service authorization decisions on behalf of a Department within AHS.

**3.20** “Provider Agreement” means the service contract signed by the Agency and either the Department of Disabilities, Aging and Independent Living, or the Department of Mental Health.

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

**3.22** “Related-party transaction” means a transaction in which one party to the transaction has the ability to impose contract terms that would not have occurred if one of the parties was not a related party.

**3.23** “Self/family-managed” means the Individual or their family plans, establishes, coordinates, maintains, and monitors all developmental disabilities services and manages the Individual’s budget within federal and state guidelines.

**3.24** “Share-managed” means that the Individual or their family manages some but not all Medicaid-funded developmental disabilities services, and an agency manages the remaining services.

**3.25** “Specialized Service Agency” or “SSA” means an agency contracted by the Department(s) to provide specialized services or offer a greater choice in services which are needed by individuals with a serious mental illness, or children and adolescents with a severe emotional disturbance, and/or for persons with developmental disabilities.

**3.26** “System of care plan” and “State system of care plan” means the plan require by 18 V.S.A. §8725 describing the nature, extent, allocation, and timing of services that will be provided to people with developmental disabilities and their families.

#### **4.0 Designated and Specialized Service Agencies**

## 4.1 General Requirements

- 4.1.1 A Designated Agency (DA) and Specialized Service Agency (SSA) shall comply with all applicable State and federal regulations.
- 4.1.2 An Agency contracted through DAIL shall comply with the State System of Care Plan for Developmental Disabilities Services.
- 4.1.3 An Agency contracted through DMH shall comply with the DMH Mental Health Provider Manual.
- 4.1.4 Agency designations shall be determined based on the specific population(s) served by the Department(s):
  - 4.1.4.1 Individuals with intellectual/developmental disabilities; and
  - 4.1.4.2 Adults with mental illness, or with significant mental health needs; and children and adolescents with, or at risk of, severe emotional disturbance, or with significant mental health needs, and their families
- 4.1.5 An Agency may have multiple designations.
- 4.1.6 Agency designations are for a period not to exceed four years, unless extended by the Commissioner.
- 4.1.7 Agencies may provide services directly and/or may enter into agreements with individuals or organizations for the provision of services.
- 4.1.8 Agencies designated in the area of Developmental Disabilities may only provide services directly if they have been certified by DDS to deliver these services, as required by the 18.V.S.A., Chapter 204A.
- 4.1.9 Designated Agencies shall request and obtain approval from the appropriate Department(s) prior to any merger or contract that impacts service delivery with another Agency or organization.

## 4.2 Agency Designation Process

- 4.2.1 Initial Designation
  - 4.2.1.1 A Designated Agency shall be incorporated to do business in the State of Vermont as a nonprofit organization and shall have received or applied for federal recognition as a tax-exempt

charitable organization as defined in Section 501(c)(3) of the Internal Revenue Code of the United States.

- 4.2.1.2 An organization may apply for initial designation as a Designated Agency if:
  - 4.2.1.2.1 The Designated Agency for the catchment area is notified by the Commissioner of intent to de-designate; or
  - 4.2.1.2.2 The Designated Agency for the catchment area will not apply for re-designation.
- 4.2.1.3 An organization may apply for initial designation as a Specialized Service Agency if:
  - 4.2.1.3.1 The organization offers a distinctive approach to service delivery and coordination
  - 4.2.1.3.2 Services meet distinctive individual needs
- 4.2.1.4 An Agency shall apply for initial designation using the application provided by the Department(s).
- 4.2.1.5 Designated Agencies may apply for new designation for an additional population, provided they meet the requirements and there is not an existing DA in the geographic area for that population or the existing DA is not applying for re-designation.
- 4.2.1.6 Each Designated Agency shall be evaluated for re-designation every four years.
- 4.2.1.7 The State Program Standing Committee (Section 6.0) for the relevant service system shall evaluate each application for initial or re-designation, and any relevant supplemental information.
- 4.2.1.8 The State Program Standing Committee shall submit a written recommendation to the Commissioner regarding initial or re-designation, and supporting documentation for this recommendation.
- 4.2.1.9 An Agency not chosen for initial designation shall have the right to appeal the decision pursuant to 18 VSA 8911(b).



#### 4.2.2 Re-designation

4.2.2.1 An Agency seeking a renewal of designation shall continue to meet the requirements established for initial designation, as well as the following requirements:

4.2.2.2 Agencies desiring re-designation shall submit a letter of intent to apply for re-designation to the Commissioner no more than thirty (30) days after the Agency's receipt of the Commissioner's written notice.

4.2.2.3 A formal application for re-designation shall be submitted by the Agency no more than sixty (60) days after the Agency's receipt of the Commissioner's written notice.

4.2.3 If an agency has received accreditation from one or more state or national bodies, the Department(s) may substitute relevant accreditation review findings for related designation requirements.

4.2.4 The Commissioner(s) shall elicit public comment for a period no less than two weeks and/or hold a public hearing to obtain input from interested public, and will seek input from the appropriate State Program Standing Committee(s).

#### 4.3 Service Delivery Policies

4.3.1 Agencies shall comply with the requirements included in any contracts or agreements with the Vermont Agency of Human Services or of its departments.

4.3.2 An Agency shall not preclude anyone from receiving the services of the Agency due to inability to pay per 18 V.S.A. § 8910(c).

4.3.3 An Agency shall ensure timely provision of services for the individual, as defined in regulation, State System of Care Plan for Developmental Services, and in the DMH Mental Health Provider Manual for Mental Health Services.

4.3.3.1 An Agency shall not discriminate in the administration of programs, services, or activities or exclude any individual from participation in programs, services, or activities based on race, religion, color, national origin, genetic information, marital/familial status, sex, sexual orientation, gender identity, age, pregnancy status,

place of birth, crime victim status, military, veteran status, disability, or any other protected status.

4.3.3.2 The inability of an Agency to meet the needs of an individual shall not be a factor in any decision by the Agency to refuse to serve the individual.

4.3.4 The Designated Agency shall ensure, within its catchment area:

4.3.4.1 That a comprehensive, integrated, accessible and responsive array of services, staff, and supports is available to meet the service needs of eligible persons consistent with the established service and budget priorities and allocations;

4.3.4.2 The provision of all comprehensive services, as detailed in the State System of Care Plan for Developmental Services; and in the DMH Mental Health Provider Manual for Mental Health Services;

4.3.4.3 The provision of crisis response services for the designated populations;

4.3.4.4 The provision of, and/or contracting for the provision of, secure and safe services for people who are in the custody of the Commissioner;

4.3.4.5 The provision of timely return to the community from inpatient or institutional placements;

4.3.4.6 The provision of timely processing of: individual applications for service, information and referral to community and government resources, education about choices for service, and support options, including self/family-managed services where applicable;

4.3.4.7 Effective collaboration with related community/human service agencies providing support services in the region, including but not limited to: physical or dental health services, social services, housing, education services, employment services, relevant state departments/agencies, local emergency departments, law enforcement, Designated and Specialized Service Agencies, veteran and active military services, peer service organizations, therapeutic foster care services, including collaboration between Mental Health and Developmental Disabilities within the Agency, and higher levels of care.

- 4.3.4.8 The provision in a timely manner of services needed to assist the Commissioner in any relevant legal proceedings, including transmission of records and witness statements;
- 4.3.5 The Agency shall facilitate all necessary referrals to external providers.
- 4.3.6 The Agency shall respond to referrals they receive in a timely manner.
- 4.3.7 The Agency shall continue care coordination for individuals who are referred to a higher level of care, including participation with discharge planning for the individual's expected timely return to their community of choice. Documentation for such care shall be maintained for the duration of the Agency's provider agreement, and if, applicable, designation status.
- 4.3.8 The Agency shall ensure that contracts are in place with all service providers with whom the Agency contracts for services using DMH/DAIL funds. The contracts shall detail the roles and responsibilities between the two entities regarding individual services and administrative functions (including information sharing and reporting, fiscal monitoring of individual services, and service plan implementation).
- 4.3.9 The Agency shall provide necessary information and guidance to the Individual or family member regarding their responsibilities for shared management. Individuals and families shall be provided information regarding the option to self/family-manage services.

#### **4.4 Agency Organization and Administration**

- 4.4.1 The Agency shall have administrative structures which encourage open communication among all entities (internal and external) and which support the development of mechanisms to identify and respond to organizational needs and concerns. This includes, but is not limited to:
- 4.4.1.1 Consistent values, mission, vision and goals displayed by all Agency staff and policies.
- 4.4.1.2 Communication and collaboration among managers, staff and administration related to programmatic planning for both short-term and long-term effectiveness. This includes the sharing of organizational outcomes and performance improvement plans.
- 4.4.1.3 Timely and shared decision-making by program managers, supervisors and/or administration.

4.4.1.4 Positive staff morale and regular review of staff satisfaction and feedback.

4.4.1.5 Communication and collaboration with individuals, families, other providers and community partner organizations.

4.4.1.6 Positive community presence and support of key community partner organizations.

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

#### **4.5 Culturally and Linguistically Appropriate Services (CLAS)**

Designated and Specialized Service Agencies shall align with the National Standards for Culturally and Linguistically Appropriate Services (CLAS)<sup>1</sup> in Health and Health Care. Agencies will provide effective, equitable understandable, and quality services that are responsive to the diverse cultural health beliefs and practices, preferred languages, health literacy, and other communication needs of individuals served.

This will include, at a minimum, promoting CLAS through policy and practice by:

4.5.1 Recruitment and support of culturally and linguistically diverse staff and leadership

4.5.2 Training on CLAS for staff, leadership, and the Board

4.5.3 Developing and maintaining a language access policy that includes providing services, as described in the Accessibility section of this Rule (4.15), Title VI of the Civil Rights Act (1964), Executive Order 13166 (2000), and other federal guidelines for language access.

4.5.4 Ongoing assessment of the organization's CLAS-related needs and integration into Continuous Improvement goals

4.5.5 Collection and maintenance of accurate and reliable demographic data to monitor and evaluate the impact of CLAS on health equity and outcomes to inform service delivery

4.5.6 Ensuring grievance and appeal processes are culturally and linguistically appropriate

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<sup>1</sup> Accessed January 2024: <https://thinkculturalhealth.hhs.gov/clas/what-is-clas>

## 4.6 Board of Directors (or equivalent)

### 4.6.1 Board Duties

The Board of a Designated Agency shall:

4.6.1.1 Meet the requirements established by 18 V.S.A. § 8909:

4.6.1.1.1 Must be representative of the demographic makeup of the area served.

4.6.1.1.2 At least 51% of the Board must be individuals with lived experience or family members of individuals with lived experience.

4.6.1.1.3 The Board will survey members annually to ensure the requirement is met.

4.6.1.2 Be responsible to the Department(s) for the application and implementation of Agency established policies related to DMH/DAIL funding.

4.6.1.2.1 The Board shall appoint an executive director (or equivalent) who shall be responsible to the Board for all Agency activities and for the application and implementation of Agency established policies.

4.6.1.3 Aligning with 3 V.S.A. § 1222, Board members will be aware of potential conflicts of interest, and disclose the conflict, recuse themselves, and/or discuss with the Board as relevant. This is especially in cases of:

4.6.1.3.1 Executive Director (or equivalent) hiring, review, and/or firing

4.6.1.3.2 New board member selection

4.6.1.4 Determine and promote the mission of the Agency.

4.6.1.5 Assess community needs and resources and provide recommendations to Agency for how to address those identified needs.

4.6.1.6 Review Agency coordination with other service systems and agencies within the geographic area.

- 4.6.1.7 Review and provide recommendations for, the Local Community Services Plan and the Continuous Quality Improvement Plan for each DMH/DAIL population served by the Agency.
- 4.6.1.8 Review the service capacity in the geographical area to meet the needs of eligible service recipients, within the guidelines established by, and the resources available from, DMH/DAIL.
- 4.6.1.9 Oversee that policies and services are consistent with the mission and outcomes of the State of Vermont, the Agency of Human Services, DMH/DAIL, and the needs of individuals and families receiving services.
- 4.6.1.10 Recommend or approve new Agency policy and significant policy updates.
- 4.6.1.11 Review and approve the Agency budget and monitor Agency financial status and staff compensation rates.
- 4.6.1.12 Oversee service quality, including the review of individual satisfaction information, and information on grievances and individual service appeals.
- 4.6.1.13 Assure that the Agency maintains a technological infrastructure to conduct business effectively with external entities, including DMH/DAIL and other state and local service agencies and systems.
- 4.6.1.14 Maintain confidentiality regarding the information it receives during its deliberations on Agency staff and individuals.
- 4.6.1.15 Ensure that Agency staff training is conducted in an effective and timely manner.

#### 4.6.2 Board By-Laws

4.6.2.1 The board shall adopt bylaws that include, but are not limited to:

- 4.6.2.1.1 Clearly written responsibilities and authorities of the Executive Director (or equivalent).
- 4.6.2.1.2 The powers and duties of the Board, its standing and special committees, and the responsibilities of individuals serving as board members, including

attendance requirements.

4.6.2.1.3 That Board meetings be open to the public, except when the Board determines the need to convene in Executive Session.

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

#### **4.7 Local Program Standing Committee**

4.7.1 The Agency shall establish a Local Program Standing Committee for each population served by the Agency.

##### **4.7.2 Committee Structure**

4.7.2.1 Each Local Program Standing Committee shall be comprised of at least five members, a majority of whom shall be disclosed individuals with direct lived experience and/or family members.

4.7.2.1.1 In Developmental Disabilities Services, at least three members shall be people with direct lived experience receiving services.

4.7.2.1.2 In Mental Health Services:

4.7.2.1.2.1 At least two members shall have direct lived experience receiving adult mental health services; and

4.7.2.1.2.2 At least two members shall have direct lived experience receiving child, youth, and family services, or be family members of an individual with that lived experience.



- 4.7.2.2 At least one member of each Local Program Standing Committee shall serve as a voting member of the Agency Board of Directors (or equivalent).
- 4.7.2.3 The Local Program Standing Committee may be comprised totally of agency board members if criterion 4.6.2.1 is met.
- 4.7.2.4 Committee members shall have the knowledge and Agencies shall provide the training necessary to be active participants in the development of the Local Community Services Plan.
- 4.7.2.5 The Agency Board of Directors (or equivalent) shall determine its policy for reimbursing committee members for expenses that, if not reimbursed, would prohibit the member from attending committee meetings.
- 4.7.3 Duties and Responsibilities
- 4.7.3.1 Local Program Standing Committee responsibilities shall include:
- 4.7.3.1.1 Providing recommendations to the Agency’s leadership regarding the appointment of a new program director or the person responsible for program services.
- 4.7.3.1.2 Providing feedback about Agency operations, management, and quality to the program services director at least annually, including the review of:
- 4.7.3.1.2.1 Aggregate results of staff, individual, and, if available, community partner organization satisfaction surveys;
- 4.7.3.1.2.2 Agency or program training plan, as described in 4.12, which shall be updated annually for DDS services and at least every three years for mental health services;
- 4.7.3.1.2.3 Aggregate results from DMH/DAIL quality processes, and any corrective actions planned or completed;
- 4.7.3.1.2.4 Agency Continuous Quality Improvement plans and corresponding results; and



4.7.3.1.2.5 Aggregate complaint, grievance, and appeal data and agency responses to any themes identified.

4.7.3.1.3 Engaging with the Agency Executive Director (or equivalent) at least annually.

4.7.3.1.4 Assisting with the development of the Agency's Local Community Services Plan, including establishing priorities for resource allocation, and the schedule for the anticipated provision of new or additional services.

## 4.8 Continuous Quality Improvement

4.8.1 The Agency shall develop, implement, and maintain an effective, ongoing, Agency-wide data-driven Continuous Quality Improvement (CQI) plan, that is reviewed annually and updated at least every four years. The CQI plan shall:

4.8.1.1 Reflect the complexity of its organization, services, and population served, and involve all Agency services (including those services furnished under contract or arrangement with a third-party);

4.8.1.2 Prioritize indicators related to:

4.8.1.2.1 For mental health populations:  
Improved mental health outcomes;

4.8.1.2.2 For developmental services populations:  
Community inclusion; independent living;  
health and safety; trauma evaluation, prevention  
and mitigation.

4.8.1.3 Prescribe actions to demonstrate clinical care and operational improvements;

4.8.1.4 Include the perspectives of individuals and families and a mechanism for input by community partner organizations, as appropriate.

4.8.2 The Agency shall maintain documentation of its quality assessment and performance improvement program and provide such documentation to the Department(s) upon request.

- 4.8.2.1 There shall be at least one measurable outcome for each goal of the CQI plan.
- 4.8.2.2 There shall be at least one responsible team, program, or staff role identified for each goal.
- 4.8.3 An Agency shall respond in a timely and effective manner to any Corrective Action Plan (or equivalent) approved by the Department(s).

## 4.9 Required Event Reporting

### 4.9.1 Individual Complaints, Grievances, and Individual Service Appeals

4.9.1.1 The Agency shall have policies and procedures to address individual complaints, grievances, and appeals that are consistent with requirements established by the Agency of Human Services, and the Department of Vermont Health Access (DVHA).

4.9.1.1.1 All grievances and individual service appeals shall be submitted to the Department of Vermont Health Access Warehouse within 14 calendar days of receipt

4.9.1.2 Complaints, grievances, and individual service appeals shall be reviewed regularly, including in aggregate, to identify and address any trends. At a minimum reviewers will include:

4.9.1.2.1 The Board of Directors (or equivalent), per 4.6.1.12

4.9.1.2.2 Local Program Standing Committees, per 4.7.3.1.2.5

4.9.1.2.3 State Program Standing Committees, per 6.2.1.8

4.9.1.2.4 The Department of Mental Health and Department of Disabilities, Aging and Independent Living

### 4.9.2 Critical Incident Reports

4.9.2.1 Agencies will follow the requirements set forth by Departments:

4.9.2.1.1 For mental health services, the Critical Incident Reporting Requirements

4.9.2.1.2 For intellectual/developmental disabilities services, the DAIL Developmental Disability Service Division and Adult Services Division Critical Incident Reporting Guidelines

## 4.10 Data Policies

4.10.1 The Agency shall have a technological infrastructure that enables cost-effective information collection, analysis, and telecommunication functions sufficient to:

4.10.1.1 Submit all required data in the format and timeline specified by DMH/DAIL;

4.10.1.2 Monitor and report on service costs, accessibility, service provision, case mix, quality assurance and improvement, and outcome activities as required by this rule and the Provider Agreement; and consistent with the DMH Mental Health Provider Manual, the Medicaid Manual for Developmental Disabilities Services and DDSSD Encounter Data Submission Guidance for Home and Community-Based Services as appropriate; and

4.10.1.3 Support high quality and responsive service provision with the capacity to monitor the services delivered by contracted service providers, and/or persons who share-manage, consistent with this rule, the Provider Agreement, and the DMH Mental Health Provider Manual, the Medicaid Manual for Developmental Disabilities Services, and DDSSD Encounter Data Submission Guidance for Home and Community-Based Services, as appropriate.

4.10.2 The Agency will remain compliant with national standards such as the United States Core Data for Interoperability (USCDI) for data transmission to the State of Vermont. The Agency will support the State of Vermont's efforts in promoting interoperability by maintaining a USCDI baseline and continue to raise the baseline as the standard evolves.

## 4.11 Local Community Services Plan

4.11.1 Each Designated Agency shall determine the need for community mental health and developmental disability services within the area served by the Agency and shall thereafter prepare a local community services plan which describes the methods by which the Agency will provide those services.

4.11.1.1 The plan shall include a schedule for the anticipated provision of new or additional services and shall specify the resources which are needed by and available to the Agency to implement the plan.

4.11.1.2 The community services plan shall be reviewed annually, and fully revised every three years.

4.11.2 The Designated Agency shall consult with the following groups to determine the priorities of needs for community mental health and developmental disability services:

4.11.2.1 the Commissioners,

4.11.2.2 Individuals receiving services and their families for each population served,

4.11.2.3 Agency Board of Directors (or equivalent),

4.11.2.4 Agency staff at multiple levels

4.11.2.5 Specialized Services Agencies,

4.11.2.6 Other organizations representing persons receiving services, including other governmental or private agencies that provide community services to the people served by the Agency

4.11.3 The plan shall encourage utilization of existing agencies, professional personnel, and public funds at both State and local levels in order to improve the effectiveness of mental health and developmental disability services and to prevent unnecessary duplication of expenditures.

#### **4.12 Personnel Policies**

4.12.1 The Agency shall have written personnel policies and procedures that promote high quality services.

4.12.1.1 The Agency shall employ qualified personnel who are assigned duties and responsibilities that are appropriate to their level of training, education, and experience, and are supervised accordingly.

4.12.1.2 The Agency shall have written policies and procedures for staff evaluation that include regular supervisory review and shall demonstrate that these policies and procedures are followed.

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

experience required for the position.

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

#### 4.12.2 Staff Training

4.12.2.1 The Agency shall develop a training plan for all staff and sub-contractors. The training plan may have different expectations for different staff types. The plan shall be updated annually for developmental disability services and at least every three years for mental health services. Training shall address:

4.12.2.1.1 Cultural responsiveness including considerations for veterans;

4.12.2.1.2 Person-centered and family-centered, recovery-oriented, evidence-based and trauma-informed care;

4.12.2.1.3 Primary care/co-occurring mental health/substance use integration;

4.12.2.1.4 Non-physical intervention and de-escalation techniques;

4.12.2.1.5 Risk assessment, suicide prevention and suicide response; and

4.12.2.1.6 The roles of families and peers.

4.12.2.1.7 The Continuity of Services Plan – see section 4.16

4.12.2.2 The Agency shall provide orientation training to new staff and document this training.

4.12.2.3 The Agency shall include individuals and/or families in the design, delivery, and evaluation of training for staff, as appropriate

4.12.2.4 The Agency shall implement training for staff consistent with the requirements included in the DDS Rule and/or those listed in the DMH Mental Health Provider Manual, as appropriate.

## 4.13 Individual Confidentiality Policies

4.13.1 The Agency shall have written policies and procedures that protect the confidentiality of individual information, consistent with applicable state and federal regulations, including but not limited to:

- 4.13.1.1 Language in staff and contracted service providers' contracts that explicitly states expectations about the confidentiality of service or care plan information.
- 4.13.1.2 Written policies and procedures for assuring informed consent.
- 4.13.1.3 Written policies and procedures that safeguard medical records and other individual information and adhere to all applicable confidentiality policies.

## 4.14 Individual Rights

4.14.1 The Agency shall have a written policy ensuring the rights of all individuals are observed consistent with state and federal law, including 18 V.S.A. § 8728, as well as the State System of Care Plan for DAIL, and the DMH Mental Health Provider Manual, and those identified in this rule.

4.14.2 Additionally, the Agency shall ensure that individuals are afforded the rights listed below.

### 4.14.3 General Rights

- 4.14.3.1 The individual has the right to be informed of their rights at intake and/or initial evaluation, as evidenced by the individual (or representative's) signature. Exceptions may be made for no signature when thoroughly documented with a rationale;
- 4.14.3.2 The right to be treated with dignity and respect by all staff;
- 4.14.3.3 The right to participate in decision making regarding services, treatment plans, ongoing supports, and practices; and
- 4.14.3.4 The right to information that is needed to plan appropriate service and supports.

#### 4.14.4 Privacy Rights

4.14.4.1 Individuals shall have the right to privacy consistent with applicable law, including HIPAA (Pub. L. No. 104-191, 110 Stat. 1936 (1996)), 42 CFR Part 2, and patient privacy requirements specific to the care of minors required by 18 V.S.A. §7103.

4.14.4.2 Individuals have the right to be informed of the limitations of privacy and confidentiality.

#### 4.14.5 Access to Services

4.14.5.1 Individuals have the right to receive information about eligibility criteria, practitioner qualifications, practice guidelines, and available services and programs regardless of whether they are offered by the Agency.

4.14.5.2 Individuals have the right to receive treatment and services in the most integrated, least restrictive setting appropriate to their needs.

4.14.5.3 Individuals have the right to a comprehensive service plan that incorporates coordination with other relevant Agencies/systems if desired.

#### 4.14.6 Personal Liberty and Autonomy

4.14.6.1 Individuals or their guardian have the right to name who their natural supports are, and to name those natural supports they do not want from participating in their supports.

4.14.6.2 Individuals or their guardian have the right to create Advance Directive(s) and have support to create them if desired.

4.14.6.3 Individuals or their guardian have the right to refuse or terminate services, providers, and/or medication, except where required by court order.

4.14.6.4 Individuals or their guardian have the right to voice complaints, grieve treatment and services, and/or appeal decisions made by an Agency without negative consequences.

4.14.6.5 Individuals or their guardian have the right to all legal protection and due process for status as an outpatient and inpatient individual, both voluntary and involuntary, as defined under Vermont law.

#### **4.15 Accessibility**

4.15.1 The Agency shall conduct its business and ensure service delivery in a way that complies with the Americans with Disabilities Act (ADA) and meets the following requirements:

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

4.15.1.2 The inclusion of transportation to access necessary supports and services must be included in the development of an individual's service plan.

4.15.1.3 Information and communication shall be provided to individuals and/or their authorized representatives in a format that is understandable to the individual applying for or accessing services.

4.15.1.4 Written policies and procedures shall be developed that provide for other accommodations, as needed, and as determined by the needs of the individual.

#### **4.16 Continuity of Services Plan**

4.16.1 Each Designated Agency shall have a written plan for continuity of care in the event of the Agency's voluntary or involuntary closure; a disaster; unanticipated service interruptions; relocation of an individual; or transfer of an individual to another provider. The plan shall account for:

4.16.1.1 Orderly and timely transfer of individuals to other service providers, or referral.

4.16.1.2 Notification to individuals, staff, and community partner organizations of any upcoming closure and transition plans for continuity of care.



- 4.16.1.3 Notification to the Department(s) no fewer than 90 days prior to closure to discuss the rationale for closure and plans for continuity of care.
- 4.16.1.4 Transfer of individual records to the appropriate service provider.
- 4.16.1.5 Ensuring that individual records are secured and maintained in accordance with State and Federal regulations.
- 4.16.1.6 To the extent feasible, identify alternative locations and methods to sustain service delivery and access to medications during emergencies and disasters
- 4.16.1.7 At a minimum, the Designated Agency shall review its Continuity of Care Plan annually and update it if needed.
- 4.16.1.8 The Department(s) may request to review a Designated Agency's Continuity of Care Plan at any time.

#### **4.17 Individual Records**

- 4.17.1 The Agency will document services in compliance with federal and state guidelines and practice standards including the Mental Health Provider Manual and the Vermont Medicaid Manual for Developmental Disabilities Services.
- 4.17.2 Individual records shall reflect the delivery of clinical care, specifically that it is strengths-based, person-centered and family-centered (for youth, as appropriate), recovery-oriented, evidence-based, and trauma-informed.
- 4.17.3 Agencies shall have internal auditing practices in place for a rotating, representative subset of clinical records.
- 4.17.4 DAIL/DMH shall maintain file review criteria with agencies pertinent to the programs being monitored.
  - 4.17.4.1 In accordance with the 21st Century Cures Act, individuals shall be given access to their health information in the electronic health record without charge, if requested.

#### **4.18 Program Budget and Fiscal Policies**

- 4.18.1** An Agency shall comply with the requirements of 18 V.S.A. § 8910.

- 4.18.2 The Agency shall have fiscal management practices that demonstrate the following:
- 4.18.2.1 Fiscal solvency, as demonstrated by the ability to meet payroll and pay bills in a timely fashion;
  - 4.18.2.2 Medicaid certification;
  - 4.18.2.3 A published fee schedule, for DDS services this requirement goes into effect July 1, 2025;
  - 4.18.2.4 The Agency shall make every reasonable effort to collect all fees from individuals and third-party payors;
  - 4.18.2.5 Reliable monitoring of billing and expenditures versus revenues by individual, by staff, by service, by program, and by service provider, in accordance with generally accepted accounting principles (GAAP);
  - 4.18.2.6 Accounting practices in accordance with DMH/DAIL standards and procedures including, at a minimum, the composite balance sheet, and the composite statement and program statements of revenue and expense;
  - 4.18.2.7 An annual financial and compliance audit performed by an independent public accountant in accordance with the department's Audit Guide and all applicable State and Federal laws, regulations, policies and procedures;
  - 4.18.2.8 Adequate fire, personal, professional and general liability, board/officer insurance coverage within guidelines set by DMH/DAIL;
  - 4.18.2.9 Efficient administrative practices, including, but not limited to, fiscal, policy, and procedures;
  - 4.18.2.10 An Agency may receive funds from sources other than the DMH/DAIL to carry out its duties for the population(s) whom they are designated to serve by DMH/DAIL. Funds received from such sources shall be identified to DMH/DAIL; and
  - 4.18.2.11 An Agency shall identify and report all related-party transactions within its organization to the Commissioner, including the nature of the relationship and transaction, and the dollar amounts involved.

## 4.19 Information Technology (IT) Policies

- 4.19.1 The Agency shall have a technological infrastructure that enables cost effective information collection, analysis, and telecommunication functions required to:
  - 4.19.1.1 Protect confidentiality of individuals when data are transferred to the Department(s) and/or other entities in adherence with, as indicated:
    - 4.19.1.1.1 the Health Insurance Portability and Accountability Act (HIPAA);
    - 4.19.1.1.2 the Family Educational Rights and Privacy Act (FERPA)
    - 4.19.1.1.3 42 CFR Part 2
  - 4.19.1.2 Ensure that data is securely kept, in compliance with Agency of Human Services (AHS) policy<sup>2</sup>; and
  - 4.19.1.3 Ensure cybersecurity through alignment with Agency of Digital Services (ADS) security standards. For more information, please visit:  
<https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>

## 5.0 Specialized Service Agencies

- 5.1 Specialized service agencies may be local, regional, or statewide.
- 5.2 Responsibilities of the Specialized Service Agency will be determined by the Commissioner during the development of the Provider Agreement and shall include clearly delineated roles and responsibilities between the specialized service Agency and the Designated Agency in the relevant geographic area(s).
- 5.3 Specialized service agencies shall meet the same requirements as a Designated Agency, with the following exceptions:
  - 5.3.1.1 Specialized service agencies shall not be responsible for assuring that a comprehensive and responsive array of services is available within the designated geographical region.
  - 5.3.1.2 Specialized service agencies shall not be responsible for determining the service needs of the community for each

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<sup>2</sup> [Rules, Policies, Procedures & Guidance Documents | Agency of Human Services \(vermont.gov\)](#)

population it serves or developing a plan to address the identified needs. They will be responsible, however, for working collaboratively with the Designated Agency in the development of the Local Community Services Plan.

5.3.1.3 Other requirements may be waived at the discretion of the Commissioner.

## **6.0 State Program Standing Committees**

**6.1** There shall be a State Program Standing Committee (State Committee) for:  
1) Adult Mental Health; 2) Child, Adolescent, and Family Mental Health; and  
3) Developmental Disabilities services.

6.1.1 The Advisory Board created by 18 V.S.A. § 8733 shall be the State Committee for Developmental Disabilities services. The State Committee shall comply with the requirements of that section.

6.1.2 The State Committee for Mental Health shall comply with the following requirements:

6.1.2.1 The State Committee(s) shall be comprised of between 10 and 15 members.

6.1.2.2 A majority of members shall be disclosed individuals with lived experience and/or family members of the disability group that they represent.

6.1.2.2.1 For the Adult Mental Health State Committee, this shall be current or former adult individuals with lived experience

6.1.2.2.2 For the Child, Adolescent, and Family Mental Health State Committee, this shall be either current or former youth individuals with lived experience, or family members of current or former youth individuals with lived experience

6.1.2.3 All members shall be appointed by the Governor or designee for terms of three years.

## **6.2 State Committee Duties and Responsibilities**

State Committee functions shall include:

6.2.1.1 Assisting in the identification of candidates for the State Committee;

6.2.1.2 State Committee meeting planning and facilitation;

- 6.2.1.3 Providing recommendations to the Department(s) regarding agency initial and redesignation, which will include:
  - 6.2.1.3.1 reviewing aggregated data and reports provided by the Department, and
  - 6.2.1.3.2 meeting with representatives from the Agency
- 6.2.1.4 Ranking and recommending priority areas of focus for the statewide system of care, to be updated at least every three years. The committee will focus on these priority areas when planning agendas and engaging in work;
  - 6.2.1.4.1 In addition to the formal recommendation process, the committee will discuss concerns about the system of care as they arise
  - 6.2.1.4.2 As needed, the committee will formalize concerns to share with Commissioner(s) as appropriate
- 6.2.1.5 Providing to the Department recommendations for candidates for classified leadership positions involved in the Agency Designation process; and
- 6.2.1.6 Evaluation of Quality: The Committees shall advise the Department on the quality and responsiveness of services offered statewide.
- 6.2.1.7 Department Policy: The Committees shall review and recommend new policy that pertains to or significantly influences services for the population they represent.
- 6.2.1.8 Grievances & Individual Service Appeals: The Committees shall review aggregate information on the grievances and individual service appeals at least annually.

## **7.0 Provisional Designation, De-Designation, and Cancellation of Contract**

### **7.1 Provisional Designation**

- 7.1.1 An Agency may be placed on provisional status at any time, following a determination by the Commissioner that the Agency has:
  - 7.1.1.1 Failed to comply with this rule or other applicable regulations;
  - 7.1.1.2 Knowingly disregarded or neglected policies and/or practices that could endanger the health or safety of individuals, their family members, employees, or the public;

- 7.1.1.3 Violated an individuals' human or civil rights;
- 7.1.1.4 Failed to implement one or more items on a Corrective Action Plan (or equivalent) as accepted by the Department(s).
- 7.1.1.5 Pattern of failed implementation decisions resulting from grievance and/or individual service appeals processes;
- 7.1.1.6 Engaged in severe fiscal irresponsibility; or
- 7.1.1.7 Falsified data/record keeping.
- 7.1.2 The notification of provisional status from the Commissioner to the Agency shall include:
  - 7.1.2.1 The reasons for such action;
  - 7.1.2.2 The conditions under which DMH/DAIL may continue to purchase services from the Agency while under provisional status; and
  - 7.1.2.3 The requirements for a Plan of Corrective Action in order to be reconsidered for re-designation, including:
    - 7.1.2.3.1 The specific areas needing correction
    - 7.1.2.3.2 The timeframes within which the elements of the plan of correction will be addressed, not to exceed 180 days.
    - 7.1.2.3.3 The criteria upon which the Plan of Corrective Action, and the subsequent report on implementation, will be evaluated for acceptability by the Commissioner
- 7.1.3 The notification of provisional status may serve as the notification of intent to de-designate an Agency or cancel a specialized service Agency contract.
- 7.1.4 The Commissioner may place an Agency on provisional status without intent to de- designate or cancel the specialized service contract.
- 7.1.5 Corrective Action Plan
  - 7.1.5.1 If the Commissioner determines that an Agency fails to comply

with this Rule, the Agency's service plan, or otherwise fails to satisfactorily meet the needs of individuals, the Commissioner shall provide a written notice to the Agency that outlines the deficiencies and the potential for termination of designated status.

- 7.1.5.2 The Agency shall submit a Plan of Corrective Action (Plan) to the Commissioner no later than thirty (30) days after receipt of the Commissioner's notification of provisional status.
  - 7.1.5.3 If the Plan is deemed acceptable by the Commissioner, the Agency provisional status will be extended for the timeframe specified within the Plan.
  - 7.1.5.4 If the Plan is deemed not acceptable by the Commissioner, the Commissioner shall notify the Agency, in writing, of intent to proceed with de-designation or contract cancellation or the need for additional information. This extension for additional information will be no longer than 15 days.
  - 7.1.5.5 At the end of the specified timeframe, the Agency shall submit a report to the Commissioner documenting that the corrections were made in accordance with the Plan.
  - 7.1.5.6 If the Corrective Actions are not acceptable by the Commissioner, the Commissioner shall notify the Agency, in writing, of intent to proceed with de-designation or contract cancellation or continuation of provisional status.
  - 7.1.5.7 Continuation of Provisional status may be granted for a period not to exceed 180 days and will only be granted in situations in which the Agency is making significant gains and is expected to meet or exceed all requirements within the additional timeframe granted.
- 7.1.6 While an Agency is under provisional status for a specific population, DMH/DAIL may:
- 7.1.6.1 Suspend or amend terms of the annual contract or other service agreements between DMH/DAIL and the Agency, as allowed by contract.
  - 7.1.6.2 Contract with other agencies to ensure uninterrupted service provision and quality.
  - 7.1.6.3 Initiate the process to identify a new Designated



Agency for that geographic area.

7.1.6.4 Take additional actions, as determined necessary by the Commissioner, to protect the well-being of individuals.

## **7.2 De-Designation and Cancellation of Specialized Service Agency Contract**

7.2.1 The Commissioner may initiate the process of Agency De-designation (for a Designated Agency) or contract cancellation (for a Specialized Service Agency) if:

7.2.1.1 The Agency has been placed on provisional status and has exhibited the unwillingness or inability to improve performance as specified in the Plan of Corrective Action and within the timeframes established by DMH/DAIL; or

7.2.1.2 The Commissioner determines an Agency meets one or more of the criteria identified in Section 7.1.1.

7.2.2 The date for de-designation or contract cancellation shall be determined by the Commissioner and shall be dependent on the actions necessary to ensure that individuals within the geographic area of the Agency continue to receive the supports and services that they need.

7.2.3 The Agency to be de-designated or have its contract cancelled shall be notified in writing of:

7.2.3.1 The effective date for de-designation or contract cancellation;

7.2.3.2 The circumstances by which DMH/DAIL will continue to purchase services through the Agency until de-designation or contract cancellation is effective; and

7.2.3.3 The actions DMH/DAIL will undertake to replace the Agency's functions and ensure high-quality service provision to persons living in the geographical area.

7.2.4 The Agency to be de-designated or have its contract cancelled shall inform its current individuals of the change in the Agency's status, and provide them with information about future arrangements, as agreed upon with the Department(s)

7.2.5 At any time during the de-designation process for a specific population, DMH/DAIL may:

7.2.5.1.1 Suspend or amend terms of the annual contract or other service agreements between DMH/DAIL and the Agency, as allowed by contract.



7.2.5.1.2 Take additional actions, as determined necessary by the Commissioner, to protect the well-being of service individuals.

## **8.0 Appeals**

**8.1** A Designated Agency that has been notified by the Commissioner of the intent to proceed with de-designation, or to not grant initial designation status, shall have the right to appeal the decision.

**8.2** Any specialized service agency that has been notified by the Commissioner of the intent to cancel or not renew its contract, or substantially modify its role and responsibilities, shall have the right to appeal the decision

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

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

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

**8.6** Conduct of hearing. At the hearing, the parties may present evidence and witnesses and be represented by counsel. The record of the hearing shall include a recording of the hearing, records relied upon, and any other information deemed by the Commissioner to be necessary for the proceeding. The Department of Mental Health and/or the Department of Disabilities, Aging, and Independent Living shall retain this record per the State of Vermont Record Retention schedule. The proceedings shall be open to the public. When public access threatens confidentiality rights, any party to the proceeding may seek appropriate measures to protect confidentiality, and the Commissioner shall take necessary steps to protect confidentiality.

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

**8.8** If any of the parties wish to appeal the decision of the Commissioner, they may submit

an appeal, in writing, to the Secretary of the Agency of Human Services within ten (10) days of receipt of the Commissioner's decision. The Secretary of the Agency of Human Services shall base their review on the record presented to the Commissioner.

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

## **9.0 Investigations and Enforcement**

**9.1** The Departments will routinely review agency operations and services offered or supported by the Designated or Specialized Service Agency to ensure that they are operated in compliance with department rules, regulations, contract/grant requirements, division mission, and the local service plan. These reviews may include site visits and may or may not be announced in advance.

**9.2** The Departments may additionally investigate of actions of an Agency in response to concerns or feedback or as a result of information received from other sources. Such investigations shall include direct communication and deliberation with the entity filing the concerns or feedback or providing the information to ensure that the Department has accurate and complete information. Agency reviews may or may not be announced in advance.

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