

## Final Proposed Filing - Coversheet

### Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms shall be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

**PLEASE REMOVE ANY COVERSHEET OR FORM NOT REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!**

**Certification Statement:** As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

### **Health Care Administrative Rules Definitions**

/s/ Todd W. Daloz

6/16/23

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)

Printed Name and Title:

Todd Daloz, Deputy Secretary, Agency of Human Services

RECEIVED BY: \_\_\_\_\_

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Minutes
- Copy of Comments
- Responsiveness Summary

280 State Drive - Center Building  
Waterbury, VT 05671-1000



OFFICE OF THE SECRETARY  
TEL: (802) 241-0440  
FAX: (802) 241-0450

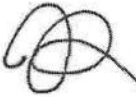
JENNEY SAMUELSON  
SECRETARY

TODD W. DALOZ  
DEPUTY SECRETARY

STATE OF VERMONT  
AGENCY OF HUMAN SERVICES

MEMORANDUM

**TO:** Jim Condos, Secretary of State

**FROM:** Jenney Samuelson, Secretary, Agency of Human Services 

**DATE:** April 1, 2022

**SUBJECT:** Signatory Authority for Purposes of Authorizing Administrative Rules

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I hereby designate Deputy Secretary of Human Services Todd W. Daloz as signatory to fulfill the duties of the Secretary of the Agency of Human Services as the adopting authority for administrative rules as required by Vermont's Administrative Procedure Act, 3 V.S.A. § 801 et seq.

Cc: Todd W. Daloz

1. TITLE OF RULE FILING:

**Health Care Administrative Rules Definitions**

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

22P039

3. ADOPTING AGENCY:

Agency of Human Services (AHS)

4. PRIMARY CONTACT PERSON:

*(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).*

Name: Ashley Berliner

Agency: Department of Vermont Health Access

Mailing Address: 280 State Drive, Waterbury, VT 05671-1000

Telephone: (802) 578-9305 Fax: (802) 241-0450

E-Mail: ahs.medicaidpolicy@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://humanservices.vermont.gov/rules-policies/health-care-rules/health-care-administrative-rules-hcar>

5. SECONDARY CONTACT PERSON:

*(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).*

Name: Danielle Fuoco

Agency: Department of Vermont Health Access

Mailing Address: 280 State Drive, Waterbury, VT 05671-1000

Telephone: (802) 585-4265 Fax: (802) 241-0450

E-Mail: danielle.fuoco@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

*(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE, EXEMPTING IT FROM INSPECTION AND COPYING?)* No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

N/A

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

N/A

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

*(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).*

3 V.S.A. § 802(b)(11); 33 V.S.A. § 1901(a)(1)

**8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:**

AHS's authority to adopt rules is identified above. The statutes authorize AHS as the adopting authority for administrative procedures and afford rulemaking authority for the administration of Vermont's medical assistance programs under Title XIX (Medicaid) of the Social Security Act.

**9. THE FILING HAS NOT CHANGED SINCE THE FILING OF THE PROPOSED RULE.**

**10. THE AGENCY HAS NOT INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.**

**11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE NOT RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.**

**12. THE AGENCY HAS NOT INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.**

**13. THE AGENCY HAS NOT INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.**

**14. CONCISE SUMMARY (150 WORDS OR LESS):**

This rule includes definitions for Health Care Administrative Rules (HCAR). This amendment to Health Care Administrative Rule 1.101 - Health Care Administrative Rules Definitions adds a definition for hospital.

**15. EXPLANATION OF WHY THE RULE IS NECESSARY:**

This rule is necessary to define terms used throughout the Health Care Administrative Rules. This amendment adds a definition for hospital.

**16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:**

This rule is required to implement state and federal health care guidance and laws. Additionally, the rule is within the authority of the Secretary, is within the expertise of AHS, and is based on relevant factors

including consideration of how the rule affects the people and entities listed below.

**17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:**

Medicaid beneficiaries; Agency of Human Services including its Departments; hospitals; health law, policy and related advocacy and community-based organizations and groups including the Office of the Health Care Advocate; and health care providers

**18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):**

This rule does not increase or lessen an economic burden on any person or entity including no impact on the State's gross annualized budget in Fiscal Year 2023. The changes and amendments conform the rule with current practice and changes to federal and state laws that have already been implemented.

**19. A HEARING WAS HELD.**

**20. HEARING INFORMATION**

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING, PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 2/8/2023

Time: 2:00 PM

Street Address: Cherry A Conference Room

Waterbury State Office Complex, 280 State Drive,  
Waterbury, VT

OR

Virtual Hearing - Phone or Microsoft Teams call in  
(802)552-8456, Phone Conference ID: 796 336 327#

Teams link will be available through the Public Notice in the Global Commitment Register on the AHS website.

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

2/15/2023

KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Medicaid

Definitions

Hospital

Health Care Administrative Rules

HCAR



**State of Vermont**  
**Agency of Human Services**  
Office of the Secretary  
280 State Drive  
Waterbury, VT 05671-1000  
[www.humanservices.vermont.gov](http://www.humanservices.vermont.gov)

*Jenney Samuelson, Secretary*

[phone] 802-241-0440  
[fax] 802-241-0450

## MEMORANDUM

**To:** Sarah Copeland Hanzas, Secretary of State, Vermont Secretary of State Office  
Representative Trevor Squirrell, Chair, Legislative Committee on Administrative Rules (LCAR)

**From:** Ashley Berliner, Director of Health Care Policy and Planning, Department of Vermont Health Access

**Cc:** Charlene Dindo, Committee Assistant, LCAR  
Monica Hutt, Assistant Director of Policy and Communications, Agency of Administration  
Jenney Samuelson, Secretary, Agency of Human Services

**Date:** June 13, 2023

**Re:** Health Care Administrative Rules

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Please find the enclosed final proposed rule filings from the Agency of Human Services for the following rules:

Amended:

- 22P039 Health Care Administrative Rules Definitions
- 22P040 Inpatient Hospital Services
- 22P041 Outpatient Hospital Services

A public hearing for the proposed rules was held on February 8, 2023, and the public comment period ended February 15, 2023. Comments were received from the Vermont Association of Hospitals & Health Systems (VAHHS) on the Inpatient Hospital Services and Outpatient Hospital Services rules. No comments were received on the Definitions rule. No changes have been made to the Outpatient Hospital Services rule and the Definitions rule since the filing of the proposed rules.

A change has been made to the Inpatient Hospital Services rule since the proposed filing. This change was made in response to the comment received from VAHHS, and the agency's response to this comment is included in the filing package. For your convenience, the change made to the proposed filing is highlighted in grey in the annotated rule text.

The agency has added "or other qualified practitioner with admitting privileges" to the definition of "inpatient" in HCAR 4.200.1(a) as follows:

- (a) **Inpatient** means a Vermont Medicaid beneficiary who has been admitted to a medical institution as an inpatient on recommendation of a physician, naturopathic physician, ~~or dentist~~, or other qualified practitioner with admitting privileges and who –
- (1) Receives room, board, and professional services in the institution for a 24-hour period, or
  - (2) Is expected by the institution to receive room, board, and professional services in the institution for a 24-hour period or longer even though it later develops that the patient dies, is discharged, or is transferred to another facility and does not actually stay in the institution for 24 hours.

If you have any questions regarding these rules, please contact Dani Fuoco, Health Care Policy Analyst, at 802-585-4265.



## Adopting Page

### **Instructions:**

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

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1. TITLE OF RULE FILING:

**Health Care Administrative Rules Definitions**

2. ADOPTING AGENCY:

Agency of Human Services (AHS)

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment if the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

SOS Rule Log #18-066 entitled: Health Care  
Administrative Rules Definitions [1.101] last adopted  
01/07/2019



**State of Vermont**  
**Agency of Administration**  
109 State Street  
Montpelier, VT 05609-0201  
[www.aoa.vermont.gov](http://www.aoa.vermont.gov)

[phone] 802-828-3322  
[fax] 802-828-2428

*Kristin L. Clouser, Secretary*

## INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

**Meeting Date/Location:** December 12, 2022, virtually via Microsoft Teams  
**Members Present:** Chair Sean Brown, Brendan Atwood, Diane Bothfeld, Jared Adler, Jennifer Mojo, John Kessler, Diane Sherman, and Donna Russo-Savage  
**Members Absent:** Michael Obuchowski  
**Minutes By:** Melissa Mazza-Paquette

- 2:00 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the November 14, 2022 meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
- No public comments made.
- Presentation of Proposed Rules on pages 2-7 to follow.
  1. Health Care Administrative Rules Definitions, Agency of Human Services, page 2
  2. Inpatient Hospital Services, Agency of Human Services, page 3
  3. Outpatient Hospital Services, Agency of Human Services, page 4
  4. Department of Liquor and Lottery, Administrative Rules Update, Department of Liquor and Lottery, page 5
  5. Radiological Health Rule, Vermont Department of Health, page 6
  6. Antidegradation Implementation Rule, Agency of Natural Resources, page 7
- Other business: Committee discussion on Economic Impact Analysis and internal agency practices being codified into rule versus an external-like motivating practice (for example: If there's a federal rule that's on point or if the Legislature is moving an agency to adopt a rule because of some existing kind of procedures or policies that are already being followed because they're essentially being enforced by another body).
- Next scheduled meeting is Monday, January 9, 2023 at 2:00 p.m.
- 4:02 p.m. meeting adjourned.



**Proposed Rule:** Health Care Administrative Rules Definitions, Agency of Human Services  
**Presented By:** Dani Fuoco

Motion made to accept the rule by John Kessler, seconded by Jared Adler and passed unanimously except for Brendan Atwood who abstained, with the following recommendations:

1. Adopting Page, #4: Include effective date.

DRAFT

## Economic Impact Analysis

### **Instructions:**

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

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#### 1. TITLE OF RULE FILING:

**Health Care Administrative Rules Definitions**

#### 2. ADOPTING AGENCY:

Agency of Human Services (AHS)

#### 3. CATEGORY OF AFFECTED PARTIES:

*LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:*

There are no additional costs associated with this rule because the amendments reflect the existing practice and coverage policies for Medicaid in Vermont.

#### 4. IMPACT ON SCHOOLS:

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:*

No impact

5. **ALTERNATIVES:** *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

Not applicable

6. **IMPACT ON SMALL BUSINESSES:**

*INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):*

No impact

7. **SMALL BUSINESS COMPLIANCE:** *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

Not applicable

8. **COMPARISON:**

*COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:*

There is no economic impact for there to be a comparison.

9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

There are no additional costs associated with this rule because the amendments reflect existing practice and coverage policies for Medicaid in Vermont. There are no alternatives to the adoption of this rule; it is necessary to ensure continued alignment with federal and state guidance and law for covered services and benefits within Vermont's Medicaid program.

## Environmental Impact Analysis

### **Instructions:**

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

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1. **TITLE OF RULE FILING:**

**Health Care Administrative Rules Definitions**

2. **ADOPTING AGENCY:**

Agency of Human Services (AHS)

3. **GREENHOUSE GAS:** *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*  
No impact

4. **WATER:** *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*  
No impact

5. **LAND:** *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*  
No impact

6. **RECREATION:** *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*  
No impact

7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*  
No impact
8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*  
No impact
9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*  
This rule has no impact on the environment.

## Public Input Maximization Plan

### Instructions:

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

This form must accompany each filing made during the rulemaking process:

1. TITLE OF RULE FILING:

**Health Care Administrative Rules Definitions**

2. ADOPTING AGENCY:

Agency of Human Services (AHS)

3. PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE, LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

AHS shared the proposed rule with Vermont Legal Aid, Vermont Medical Society, Vermont Association of Hospitals and Health Systems, Vermont Care Partners, Bi-State Primary Care Association, and the VNAs of Vermont on 9/28/2022. No comments were received.

AHS notified the Medicaid and Exchange Advisory Committee (MEAC) on 10/12/2022 including the estimated timeframe for filing and the proposed amendments to the rule. No comments were received.

The proposed rule was posted on the AHS website for public comment, and a public hearing was held on 2/8/2023. No one attended the hearing. The public comment period closed on 2/15/2023. No comments were received.

When a rule is filed with the Office of the Secretary of State, AHS provides notice and access to the rule through the Global Commitment Register (GCR). The GCR provides notification of policy changes and



## Public Input

clarifications of existing Medicaid policy, including rulemaking, under Vermont's 1115 Global Commitment to Health waiver. Anyone can subscribe to the GCR. Proposed, final proposed, and adopted rules, including all public comments and responses to rulemaking, are posted to the GCR. Subscribers receive email notifications of rule filings including hyperlinks to posted documents and an explanation of how to provide comment and be involved in the rulemaking.

#### **4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:**

Agency of Human Services, and the Department of Vermont Health Access;

Vermont Legal Aid;

Vermont Medical Society;

Vermont Association of Hospitals and Health Systems;

Vermont Care Partners;

Bi-State Primary Care Association; and

Medicaid and Exchange Advisory Committee.

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Health Care Administrative Rules Definitions

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1.101 Health Care Administrative Rules Definitions (01/07/2019-08/08/2023, GCR 18-03722-107)

For the purposes of these Health Care Administrative Rules, the term:

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

- (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,
- (2) Reduction, suspension, or termination of a previously authorized service,
- (3) Denial, in whole or in part, of payment for a service,
- (4) Failure to provide services in a timely manner, as defined by the Agency of Human Services,
- (5) Failure to act within timeframes regarding standard resolution of grievances and appeals,
- (6) Denial of a beneficiary's request to obtain services outside the network,
- (7) Denial of a beneficiary's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other beneficiary liabilities.

**“Agency”** means the Vermont Agency of Human Services or any of its departments, offices, or divisions.

**“Beneficiary”** means any individual eligible to have benefits paid to him or her, or on his or her behalf, under Vermont Medicaid.

**“Centers for Medicare and Medicaid Services”** or **“CMS”** mean a federal agency within the U.S. Department of Health and Human Services. Programs administered by CMS include Medicare, Medicaid, the Children's Health Insurance Program (CHIP), and the federal Health Insurance Marketplace.

**“Code of Federal Regulations”** or **“CFR”** mean the codification of rules published in the Federal Register by the departments and agencies of the Federal Government.

**“Day”** means calendar day unless otherwise specified.

**“Durable Medical Equipment”** or **“DME”** means equipment and appliances that:

- (1) Are primarily and customarily used to serve a medical purpose,
- (2) Are generally not useful to an individual in the absence of disability, illness, or injury,
- (3) Can withstand repeated use, and
- (4) Can be reusable or removable.

**“DVHA”** means the Department of Vermont Health Access.

**“Early and Periodic, Screening, Diagnostic, and Treatment”** or **“EPSDT”** mean the items and services defined in 1905(r) of the Social Security Act which include screening, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in section 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State Plan.

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**Health Care Administrative Rules Definitions**

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**“Global Commitment to Health Waiver”** means a Medicaid Demonstration Waiver authorized by Section 1115 of the Social Security Act, which provides Vermont Medicaid with federally approved waivers of specific requirements of the Social Security Act that would otherwise apply to Vermont Medicaid. These waivers provide Vermont with expenditure and policy authority to expand Medicaid eligibility and to pay for programs and services that promote the objectives of the Medicaid program outside of the Medicaid State Plan.

**“Health Care Administrative Rules”** or **“HCAR”** mean the collection of regulations adopted by the Agency of Human Services that govern the administration of Vermont Medicaid, including general provisions, eligibility, benefit delivery, covered services, reimbursement, specialized services, beneficiary rights, and provider responsibilities.

**“HIPAA”** means the Health Insurance Portability and Accountability Act, which establishes national standards to protect individuals’ medical records and other personal health information.

**“Hospital”** means a facility that –

- (1) is primarily engaged in providing, by or under the supervision of doctors of medicine or osteopathy, inpatient hospital services for the diagnosis, treatment, and care or rehabilitation of persons who are sick, injured, or disabled;
- (2) is not primarily engaged in providing skilled nursing care and related services for inpatients who require medical or nursing care;
- (3) provides 24-hour nursing service; and
- (4) is licensed or approved as meeting the standards for licensing by the State or local licensing agency.

**“Human Services Board”** means the independent part of AHS that serves as the external appeals entity for compliance with 42 CFR 431, Subpart E, and 3 VSA 3090.

**“Medicare”** means the health insurance program for the aged and disabled under Title XVIII of the Social Security Act.

**“Network”** means the providers who are enrolled in Vermont Medicaid and who provide services to beneficiaries.

**“Plain Language”** means language that the intended audience, including individuals with limited English proficiency, can readily understand and use because that language is concise, well organized, and follows best practices of plain language writing for that audience.

**“Provider”** means any individual or entity who has entered into an agreement with the Agency of Human Services or any of its departments, offices, or divisions, to provide services covered by Vermont Medicaid.

**“Provider Manuals”** means policy and procedure documents outlining the policies and practices for medical providers enrolled with Vermont Medicaid. Manuals are made publicly available for medical coverage and medical programs administered by the Agency.

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Health Care Administrative Rules Definitions

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**“Service Authorization Request”** means a request for the provision of a service, including prior authorization and concurrent review, that requires authorization pursuant to 42 CFR 438.210.

**“Services”** means a benefit (1) covered under the Global Commitment to Health Waiver, (2) included in the State Medicaid Plan, (3) authorized by state rule or other law, (4) required by federal law, or (5) identified in the Intergovernmental Agreement between DVHA and AHS for the administration and operation of the Global Commitment to Health Waiver.

**“State Fair Hearing”** means an appeal to AHS for a hearing before the Human Services Board.

**“State Plan”** means the agreement between Vermont and the Centers for Medicare and Medicaid Services approved under Title XIX of the Social Security Act describing how Vermont administers its Medicaid program.

**“Vermont Medicaid”** means the medical assistance provided under the State Plan approved under Title XIX of the Social Security Act, and the terms and conditions of the Global Commitment to Health Waiver, as approved by CMS.

Final Proposed

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**Health Care Administrative Rules Definitions**

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**1.101 Health Care Administrative Rules Definitions (08/08/2023, GCR 22-107)**

For the purposes of these Health Care Administrative Rules, the term:

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

- (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,
- (2) Reduction, suspension, or termination of a previously authorized service,
- (3) Denial, in whole or in part, of payment for a service,
- (4) Failure to provide services in a timely manner, as defined by the Agency of Human Services,
- (5) Failure to act within timeframes regarding standard resolution of grievances and appeals,
- (6) Denial of a beneficiary's request to obtain services outside the network,
- (7) Denial of a beneficiary's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other beneficiary liabilities.

**“Agency”** means the Vermont Agency of Human Services or any of its departments, offices, or divisions.

**“Beneficiary”** means any individual eligible to have benefits paid to him or her, or on his or her behalf, under Vermont Medicaid.

**“Centers for Medicare and Medicaid Services”** or **“CMS”** mean a federal agency within the U.S. Department of Health and Human Services. Programs administered by CMS include Medicare, Medicaid, the Children's Health Insurance Program (CHIP), and the federal Health Insurance Marketplace.

**“Code of Federal Regulations”** or **“CFR”** mean the codification of rules published in the Federal Register by the departments and agencies of the Federal Government.

**“Day”** means calendar day unless otherwise specified.

**“Durable Medical Equipment”** or **“DME”** means equipment and appliances that:

- (1) Are primarily and customarily used to serve a medical purpose,
- (2) Are generally not useful to an individual in the absence of disability, illness, or injury,
- (3) Can withstand repeated use, and
- (4) Can be reusable or removable.

**“DVHA”** means the Department of Vermont Health Access.

**“Early and Periodic, Screening, Diagnostic, and Treatment”** or **“EPSDT”** mean the items and services defined in 1905(r) of the Social Security Act which include screening, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in section 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State Plan.

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**Health Care Administrative Rules Definitions**

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**“Global Commitment to Health Waiver”** means a Medicaid Demonstration Waiver authorized by Section 1115 of the Social Security Act, which provides Vermont Medicaid with federally approved waivers of specific requirements of the Social Security Act that would otherwise apply to Vermont Medicaid. These waivers provide Vermont with expenditure and policy authority to expand Medicaid eligibility and to pay for programs and services that promote the objectives of the Medicaid program outside of the Medicaid State Plan.

**“Health Care Administrative Rules”** or **“HCAR”** mean the collection of regulations adopted by the Agency of Human Services that govern the administration of Vermont Medicaid, including general provisions, eligibility, benefit delivery, covered services, reimbursement, specialized services, beneficiary rights, and provider responsibilities.

**“HIPAA”** means the Health Insurance Portability and Accountability Act, which establishes national standards to protect individuals’ medical records and other personal health information.

**“Hospital”** means a facility that –

- (1) is primarily engaged in providing, by or under the supervision of doctors of medicine or osteopathy, inpatient hospital services for the diagnosis, treatment, and care or rehabilitation of persons who are sick, injured, or disabled;
- (2) is not primarily engaged in providing skilled nursing care and related services for inpatients who require medical or nursing care;
- (3) provides 24-hour nursing service; and
- (4) is licensed or approved as meeting the standards for licensing by the State or local licensing agency.

**“Human Services Board”** means the independent part of AHS that serves as the external appeals entity for compliance with 42 CFR 431, Subpart E, and 3 VSA 3090.

**“Medicare”** means the health insurance program for the aged and disabled under Title XVIII of the Social Security Act.

**“Network”** means the providers who are enrolled in Vermont Medicaid and who provide services to beneficiaries.

**“Plain Language”** means language that the intended audience, including individuals with limited English proficiency, can readily understand and use because that language is concise, well organized, and follows best practices of plain language writing for that audience.

**“Provider”** means any individual or entity who has entered into an agreement with the Agency of Human Services or any of its departments, offices, or divisions, to provide services covered by Vermont Medicaid.

**“Provider Manuals”** means policy and procedure documents outlining the policies and practices for medical providers enrolled with Vermont Medicaid. Manuals are made publicly available for medical coverage and medical programs administered by the Agency.

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**Health Care Administrative Rules Definitions**

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**“Service Authorization Request”** means a request for the provision of a service, including prior authorization and concurrent review, that requires authorization pursuant to 42 CFR 438.210.

**“Services”** means a benefit (1) covered under the Global Commitment to Health Waiver, (2) included in the State Medicaid Plan, (3) authorized by state rule or other law, (4) required by federal law, or (5) identified in the Intergovernmental Agreement between DVHA and AHS for the administration and operation of the Global Commitment to Health Waiver.

**“State Fair Hearing”** means an appeal to AHS for a hearing before the Human Services Board.

**“State Plan”** means the agreement between Vermont and the Centers for Medicare and Medicaid Services approved under Title XIX of the Social Security Act describing how Vermont administers its Medicaid program.

**“Vermont Medicaid”** means the medical assistance provided under the State Plan approved under Title XIX of the Social Security Act, and the terms and conditions of the Global Commitment to Health Waiver, as approved by CMS.

Final Proposed

VERMONT **GENERAL ASSEMBLY**

# The Vermont Statutes Online

## **Title 3 : Executive**

### **Chapter 025 : Administrative Procedure**

#### **Subchapter 001 : General Provisions**

(Cite as: 3 V.S.A. § 802)

**§ 802. Repealed. 1981, No. 82, § 7(1).**



VERMONT **GENERAL ASSEMBLY**

# The Vermont Statutes Online

## Title 33 : Human Services

### Chapter 019 : Medical Assistance

#### Subchapter 001 : Medicaid

(Cite as: 33 V.S.A. § 1901)

#### § 1901. Administration of program

(a)(1) The Secretary of Human Services or designee shall take appropriate action, including making of rules, required to administer a medical assistance program under Title XIX (Medicaid) and Title XXI (SCHIP) of the Social Security Act.

(2) The Secretary or designee shall seek approval from the General Assembly prior to applying for and implementing a waiver of Title XIX or Title XXI of the Social Security Act, an amendment to an existing waiver, or a new state option that would restrict eligibility or benefits pursuant to the Deficit Reduction Act of 2005. Approval by the General Assembly under this subdivision constitutes approval only for the changes that are scheduled for implementation.

(3) [Repealed.]

(4) A manufacturer of pharmaceuticals purchased by individuals receiving State pharmaceutical assistance in programs administered under this chapter shall pay to the Department of Vermont Health Access, as the Secretary's designee, a rebate on all pharmaceutical claims for which State-only funds are expended in an amount that is in proportion to the State share of the total cost of the claim, as calculated annually on an aggregate basis, and based on the full Medicaid rebate amount as provided for in Section 1927(a) through (c) of the federal Social Security Act, 42 U.S.C. § 1396r-8.

(b) [Repealed.]

(c) The Secretary may charge a monthly premium, in amounts set by the General Assembly, per family for pregnant women and children eligible for medical assistance under Sections 1902(a)(10)(A)(i)(III), (IV), (VI), and (VII) of Title XIX of the Social Security Act, whose family income exceeds 195 percent of the federal poverty level, as permitted under section 1902(r)(2) of that act. Fees collected under this subsection shall be credited to the State Health Care Resources Fund established in section 1901d of this title and shall be available to the Agency to offset the costs of providing Medicaid services. Any co-payments, coinsurance, or other cost sharing to be charged shall also be authorized and set by the General Assembly.

(d)(1) To enable the State to manage public resources effectively while preserving and

enhancing access to health care services in the State, the Department of Vermont Health Access is authorized to serve as a publicly operated managed care organization (MCO).

(2) To the extent permitted under federal law, the Department of Vermont Health Access shall be exempt from any health maintenance organization (HMO) or MCO statutes in Vermont law and shall not be considered to be an HMO or MCO for purposes of State regulatory and reporting requirements. The MCO shall comply with the federal rules governing managed care organizations in 42 C.F.R. Part 438. The Vermont rules on the primary care case management in the Medicaid program shall be amended to apply to the MCO except to the extent that the rules conflict with the federal rules.

(3) The Agency of Human Services and Department of Vermont Health Access shall report to the Health Care Oversight Committee about implementation of Global Commitment in a manner and at a frequency to be determined by the Committee. Reporting shall, at a minimum, enable the tracking of expenditures by eligibility category, the type of care received, and to the extent possible allow historical comparison with expenditures under the previous Medicaid appropriation model (by department and program) and, if appropriate, with the amounts transferred by another department to the Department of Vermont Health Access. Reporting shall include spending in comparison to any applicable budget neutrality standards.

(e) [Repealed.]

(f) The Secretary shall not impose a prescription co-payment for individuals under age 21 enrolled in Medicaid or Dr. Dynasaur.

(g) The Department of Vermont Health Access shall post prominently on its website the total per-member per-month cost for each of its Medicaid and Medicaid waiver programs and the amount of the State's share and the beneficiary's share of such cost.

(h) To the extent required to avoid federal antitrust violations, the Department of Vermont Health Access shall facilitate and supervise the participation of health care professionals and health care facilities in the planning and implementation of payment reform in the Medicaid and SCHIP programs. The Department shall ensure that the process and implementation include sufficient State supervision over these entities to comply with federal antitrust provisions and shall refer to the Attorney General for appropriate action the activities of any individual or entity that the Department determines, after notice and an opportunity to be heard, violate State or federal antitrust laws without a countervailing benefit of improving patient care, improving access to health care, increasing efficiency, or reducing costs by modifying payment methods. (Added 1967, No. 147, § 6; amended 1997, No. 155 (Adj. Sess.), § 21; 2005, No. 159 (Adj. Sess.), § 2; 2005, No. 215 (Adj. Sess.), § 308, eff. May 31, 2006; 2007, No. 74, § 3, eff. June 6, 2007; 2009, No. 156 (Adj. Sess.), § E.309.15, eff. June 3, 2010; 2009, No. 156 (Adj. Sess.), § I.43; 2011, No. 48, § 16a, eff. Jan. 1, 2012; 2011, No. 139 (Adj. Sess.), § 51, eff.

May 14, 2012; 2011, No. 162 (Adj. Sess.), § E.307.6; 2011, No. 171 (Adj. Sess.), § 41c; 2013, No. 79, § 23, eff. Jan. 1, 2014; 2013, No. 79, § 46; 2013, No. 131 (Adj. Sess.), § 39, eff. May 20, 2014; 2013, No. 142 (Adj. Sess.), § 98; 2017, No. 210 (Adj. Sess.), § 3, eff. June 1, 2018.)



# Proposed Rules Postings

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### Search Rules

#### Deadline For Public Comment

Deadline: Feb 15, 2023

The deadline for public comment has expired. Contact the agency or primary contact person listed below for assistance.

#### Rule Details

Rule Number:	22P039
Title:	Health Care Administrative Rules Definitions.
Type:	Standard
Status:	Proposed
Agency:	Agency of Human Services
Legal Authority:	3 V.S.A. § 802(b)(11); 33 V.S.A. § 1901(a)(1)
Summary:	This rule includes definitions for Health Care Administrative Rules (HCAR). This amendment to Health Care Administrative Rule 1.101 - Health Care Administrative Rules Definitions adds a definition for hospital.
Persons Affected:	Medicaid beneficiaries; Agency of Human Services including its Departments; hospitals; health law, policy and related advocacy and community-based organizations and groups including the Office of the Health Care Advocate; and health care providers.
Economic Impact:	This rule does not increase or lessen an economic burden on any person or entity including no impact on the State's gross annualized budget in Fiscal Year 2023. The changes and amendments conform the rule with current practice and changes to federal and state laws that have already been implemented.
Posting date:	Dec 28,2022

#### Hearing Information

##### Information for Hearing # 1

Hearing date:	02-08-2023 2:00 PM <span style="background-color: #ccc; padding: 2px;">ADD TO YOUR CALENDAR</span>
Location:	Oak 49 Conference Room, State Office Complex
Address:	280 State Drive
City:	Waterbury
State:	VT
Zip:	05671
Hearing Notes:	Also virtually: Phone or Microsoft Teams call in (802)552-8456, Phone Conference ID: 796 336 327# Live link available from the Public Notice in the Global Commitment Register on the AHS website.

#### Contact Information

##### Information for Primary Contact

**PRIMARY CONTACT PERSON** - A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE.  
 Level: Primary

Name: Ashley Berliner  
 Agency: Agency of Human Services  
 Address: 280 State Drive  
 City: Waterbury  
 State: VT  
 Zip: 05671-1000  
 Telephone: 802-578-9305  
 Fax: 802-241-0450  
 Email: [ahs.medicaidpolicy@vermont.gov](mailto:ahs.medicaidpolicy@vermont.gov)

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Website: <https://humanservices.vermont.gov/rulespolicies/0d0ahealth-care-rules/health-care-administrativerules-0d0ahcar>  
 Address: [VIEW WEBSITE](#)

**Information for Secondary Contact**

**SECONDARY CONTACT PERSON - A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON.**

Level: Secondary  
 Name: Danielle Fuoco  
 Agency: Agency of Human Services  
 Address: 280 State Drive,  
 City: Waterbury  
 State: VT  
 Zip: 05671  
 Telephone: 802-585-4265  
 Fax: 802-241-0450  
 Email: [danielle.fuoco@vermont.gov](mailto:danielle.fuoco@vermont.gov)

[SEND A COMMENT](#)

**Keyword Information**

Keywords:

Medicaid  
 Definitions  
 Hospital  
 Health Care Administrative Rules  
 HCAR

[Back](#)



OFFICE OF THE SECRETARY OF STATE  
VERMONT STATE ARCHIVES & RECORDS ADMINISTRATION (VSARA)  
(802) 828-2863

<b>TO:</b>	Seven Days Legals ( <a href="mailto:legals@sevendaysvt.com">legals@sevendaysvt.com</a> ) Kaitlin Montgomery( <a href="mailto:kaitlin@sevendaysvt.com">kaitlin@sevendaysvt.com</a> )	Tel: (802) 865-1020 x110. Attn: Kaitlin Montgomery
	The Caledonian Record Julie Poutré ( <a href="mailto:adv@caledonian-record.com">adv@caledonian-record.com</a> )	Tel: 748-8121 FAX: 748-1613
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	St. Albans Messenger Ben Letourneau ( <a href="mailto:ben.letourneau@samessenger.com">ben.letourneau@samessenger.com</a> )	Tel: 524-9771 ext. 117 FAX: 527-1948 Attn: Ben Letourneau
	The Islander ( <a href="mailto:islander@vermontislander.com">islander@vermontislander.com</a> )	Tel: 802-372-5600 FAX: 802-372-3025
	Vermont Lawyer ( <a href="mailto:hunter.press.vermont@gmail.com">hunter.press.vermont@gmail.com</a> )	Attn: Will Hunter

**FROM:** APA Coordinator, VSARA

**Date of Fax:** December 27, 2022

**RE:** The "Proposed State Rules " ad copy to run on

**January 5, 2023**

**PAGES INCLUDING THIS COVER MEMO:**

**2**

**\*NOTE\* 8-pt font in body. 12-pt font max. for headings - single space body. Please include dashed lines where they appear in ad copy. Otherwise minimize the use of white space. Exceptions require written approval.**

If you have questions, or if the printing schedule of your paper is disrupted by holiday etc. please contact VSARA at 802-828-3700, or E-Mail [sos.statutoryfilings@vermont.gov](mailto:sos.statutoryfilings@vermont.gov), Thanks.

## PROPOSED STATE RULES

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By law, public notice of proposed rules must be given by publication in newspapers of record. The purpose of these notices is to give the public a chance to respond to the proposals. The public notices for administrative rules are now also available online at <https://secure.vermont.gov/SOS/rules/>. The law requires an agency to hold a public hearing on a proposed rule, if requested to do so in writing by 25 persons or an association having at least 25 members.

To make special arrangements for individuals with disabilities or special needs please call or write the contact person listed below as soon as possible.

To obtain further information concerning any scheduled hearing(s), obtain copies of proposed rule(s) or submit comments regarding proposed rule(s), please call or write the contact person listed below. You may also submit comments in writing to the Legislative Committee on Administrative Rules, State House, Montpelier, Vermont 05602 (802-828-2231).

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### Antidegradation Implementation Rule.

Vermont Proposed Rule: 22P038

AGENCY: Agency of Natural Resources

CONCISE SUMMARY: The proposed rule lays out the process for implementing Vermont's antidegradation policy. Vermont's antidegradation policy requires that existing uses of waters and the level of water quality necessary to protect those uses shall be maintained and protected. To implement this policy, the proposed rule requires an analysis of water quality impacts, to be conducted during the review of applications for permits authorizing activities that are required to comply with the Vermont WQS. The rule includes a list of permits subject to antidegradation review, the required public process, and the three-tiered analysis of water quality impacts: Protection of Outstanding Resource Waters, protection of High Quality Waters, and protection of Existing Uses. The rule also includes an analysis for determining when a reduction in receiving-water quality is allowable, based on evaluation of the subsequent socioeconomic impact of not allowing the proposed activity.

FOR FURTHER INFORMATION, CONTACT: Bethany Sargent, DEC Monitoring and Assessment Program, Agency of Natural Resources, 1 National Life Drive, Davis 3, Montpelier, Vermont, 05620-3522 Tel: 802-490-6131 Fax: 802-828-1544 Email: [bethany.sargent@vermont.gov](mailto:bethany.sargent@vermont.gov) URL: <https://dec.vermont.gov/watershed/laws/#Rulemaking>.

FOR COPIES: Hannah Smith, DEC Office of General Counsel, Agency of Natural Resources, 1 National Life Drive, Davis 2, Montpelier, Vermont, 05620-1544 Tel: 802-461-8187 Fax: 802-828-1544 Email: [hannah.smith@vermont.gov](mailto:hannah.smith@vermont.gov)

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NOTE: The three rules below have been promulgated by the Agency of Human Services who has requested the notices be combined to facilitate a savings for the agency. When contacting the agency about these rules please note the title and rule number of the proposed rule(s) you are interested in.

- Health Care Administrative Rules Definitions – Vermont Proposed Rule: **22P039**
- Inpatient Hospital Services – Vermont Proposed Rule: **22P040**
- Outpatient Hospital Services – Vermont Proposed Rule: **22P041**

AGENCY: Agency of Human Services

CONCISE SUMMARY: The proposed rules set forth criteria for coverage and service delivery for the Medicaid program. These rules are part of the sequential adoption of Health Care Administrative Rules designed to improve public accessibility and comprehension of the rules under Vermont's Medicaid program. The amendments to each of the three rules align with relevant federal and state law and guidance. The amendment to Definitions adds a definition for hospital. The amendments to Inpatient Hospital Services and Outpatient Hospital Services were made to be consistent with HCAR language and formatting, revised to include new definitions informed by federal Medicaid law, and removed content described in other policies or beyond the scope of these rules.

FOR FURTHER INFORMATION, CONTACT: Dani Fuoco Agency of Human Services 280 State Drive, Waterbury, VT 05671-1000; Tel: 802-585-4265; Fax: 802-241-0450; E-mail: [danielle.fuoco@vermont.gov](mailto:danielle.fuoco@vermont.gov); URL: <https://humanservices.vermont.gov/rules-policies/health-care-rules/health-care-administrative-rules-hcar>

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