FINAL PROPOSED RULE # 26-P001

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:

Brain Injury Program Rule

/s/ Dawn O'Toole , on 6/29/26

(signature) (date)

Printed Name and Title:
Dawn O'Toole, Chief Operating Officer, 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

1. TITLE OF RULE FILING:
   Brain Injury Program Rule
2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE
   26P001
3. ADOPTING AGENCY:
   Agency of Human Services (AHS); Department of Disabilities, Aging, and Independent Living
4. PRIMARY CONTACT PERSON:
   (A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

   Name: Megan Tierney-Ward

   Agency: AHS; Department of Disabilities, Aging, and Independent Living (DAIL)

   Mailing Address: HC 2 South, 280 State Drive
   Waterbury, VT 05671-2060

   Telephone: Fax:

   E-Mail: megan.tierney-ward@vermont.gov

   Web URL *(WHERE THE RULE WILL BE POSTED)*:
   https://dail.vermont.gov/public-notices-and-hearings
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: Stuart Schurr

   Agency: AHS; DAIL

   Mailing Address: HC 2 South, 280 State Drive
   Waterbury, VT 05671-2060

   Telephone: 802-238-3754 Fax:

   E-Mail: stuart.schurr@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:

   PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

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. § 801(b)(11); 33 V.S.A. § 1901(a)(1)
8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:
   The above statutes identify AHS as the adopting authority for administrative procedures and grant to AHS rulemaking authority for the administration of Vermont's medical assistance programs under Tile XIX (Medicaid) of the Social Security Act. This includes the adoption, by rule, of Brain Injury Program standards for the purpose of maintaining program operations and standards under the authoriy of Vermont's Medicaid Global Commitment to Health 1115 Waiver.
9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.
10. THE AGENCY HAS 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 INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.
13. THE AGENCY HAS 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**):

    DAIL has long relied on policies and program standards to determine eligibility for, and to administer, BIP services. DAIL now seeks to codify these policies and standards through the adoption of this new rule, which will modernize some definitions, add clarity regarding continued clinical eligibility, incorporate a required Medicaid policy regarding paying legally responsible individuals, insert federally required Electronic Visit Verification, and add an updated Case Management definition, along with a new "Service Broker" service

to comply with federally required Conflict-Free Case Management rules. Once adopted, these BIP Rules will be incorporated into the Health Care Administrative Rules, a set of rules for all Vermont Medicaid services, which is maintained by AHS.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

Vermont is required by the Centers for Medicare and Medicaid Services (CMS) to maintain Medicaid rules for covered services. Adopting BIP rules will help Vermont ensure oversight and full compliance with the CMS Special Terms and Conditions, as set forth in Vermont's Medicaid Global Commitment to Health 1115 Waiver.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

AHS' decision to adopt rules for the Brain Injury Program was based upon the language in 33 V.S.A. § 1901(a)(1), which directs the Secretary of Human Services to take appropriate action, including making of rules, required to administer the program, along with the CMS requirement that Vermont maintain rules for Medicaid covered services. DAIL has consulted experts within and outside of Vermont (e.g., BIP providers, the State Medicaid Policy Unit, Vermont Legal Aid, the Vermont Center for Independent Living, Brain Injury Alliance of VT, and the National Association of State Head Injury Administrators (NASHIA))to develop language that is consistent with Medicaid rules and CMS Special Terms and Conditions and aligns with input gathered from a 2018 federal Administration for Community Living (ACL) Traumatic Brain Injury State Partnership Program Grant aimed at improving Vermont's system for brain injury survivors.

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

Department of Disabilities, Aging, and Independent Living

Brain Injury Program providers

Vermont Legal Aid

Brain Injury Program participants

Brain injury survivors

Brain Injury Alliance of Vermont

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

This rule is not expected to have an economic impact. The Rule is intended to codify existing services, standards, and budgets. The existing policies and standards applicable to the Brain Injury Program can be found here: https://asd.vermont.gov/sites/asd/files/documents/TBI_Program_Manual_Updated_12-19-2025.pdf

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: 2/25/2026

Time: 02:00 PM

Street Address: Waterbury State Office Complex, Cherry Conference Room, 280 State Drive, Waterbury VT

Zip Code: 05671

URL for Virtual: https://www.zoomgov.com/j/1608152603?pwd=W0cPG9astfxhORfVZQu1eYymXSwS59.1

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

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

3/6/2026

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

Brain Injury

Traumatic Brain Injury

Habilitation

Case Management

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: Sarah Copeland Hanzas, Secretary of State

FROM: Jenney Samuelson, Secretary, Agency of Human Services

DATE: June 29, 2026

SUBJECT: Signatory Authority for Purposes of Authorizing Administrative Rules

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I hereby designate Dawn O'Toole, Chief Operating Officer, Agency of Human Services 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 Procedures Act, 3. V.S.A § 801 et seq.

CC: Dawn O'Toole via Dawn.OToole@vermont.gov

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:
   Brain Injury Program Rule
2. ADOPTING AGENCY:
   Agency of Human Services (AHS); Department of Disabilities, Aging, and Independent Living
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 **A NEW RULE** .

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

   Not applicable

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:

   Brain Injury Program Rule

2. ADOPTING AGENCY:

   Agency of Human Services (AHS); Department of Disabilities, Aging, and Independent Living

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:

   Department of Disabilities, Aging and Independent Living - these rules will help AHS/DAIL maintain standards,oversight, and compliance with CMS Standard Terms and Conditions.

   Vermont will no longer be out of compliance with federal requirements to maintain Medicaid regulations.

Brain Injury Program participants - will have increased transparency regarding program standards.

Brain Injury Program providers - will have clear, transparent rules to follow when providing BIP services.

Vermont Legal Aid - will have clear, transparent rules to follow on behalf of the participants they represent.

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 is anticipated.

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*.

No impact is anticipated.

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 is anticipated.

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.*

No impact is anticipated.

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 are no alternatives to these rules. This rule is expected to have little to no economic impact. Services to Vermonters will continue as they do now.

9. SUFFICIENCY: *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*
The impact analysis was conducted using subject matter expertise of BIP policies and operating standards.

DAIL's policy consultant (previous DAIL Deputy Commissioner), DAIL program managers, Health Management Associates (HMA) Consultant, and the State Medicaid Policy Unit have been part of developing language and assessing impact using the current BIP policy manual, HCAR Medicaid rules, federal Medicaid regulations, and CMS Special Terms and Conditions as guides. DAIL program managers have an ongoing, close working relationship with BIP providers. DAIL also considered input gathered from a 2018 federal Administration for Community Living (ACL) Traumatic Brain Injury State Partnership Program Grant aimed at improving Vermont's system for brain injury survivors.

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:

   Brain Injury Program Rule

2. ADOPTING AGENCY:

   Agency of Human Services (AHS); Department of Disabilities, Aging, and Independent Living

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 is anticipated.

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 is anticipated.

5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

   No impact is anticipated.

6. RECREATION: *EXPLAIN HOW THE RULE IMPACTS RECREATION IN THE STATE:*
   No impact is anticipated.
7. CLIMATE: *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*
   No impact is anticipated.
8. OTHER: *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*
   No impact is anticipated.
9. SUFFICIENCY: *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*
   Not applicable

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:

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1. TITLE OF RULE FILING:

   Brain Injury Program Rule

2. ADOPTING AGENCY:

   Agency of Human Services (AHS); Department of Disabilities, Aging, and Independent Living

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:

   DAIL sought public comment from a broad range of interested parties, including the public, by posting the proposed rule on its website and making announcements at the DAIL Advisory Board meeting and other stakeholder meetings, and sending the proposed rule to Brain Injury Program providers (https://asd.vermont.gov/sites/asd/files/documents/Active%20TBI%20Provider%20List%202025%20with%20Emails_.pdf), Brain Injury Alliance of VT, VT Center for Independent Living, and Vermont Legal Aid and encouraging them to share it with program participants. Notice was also posted on the Global Commitment Register. DAIL provided a variety of options through which people could share feedback on the proposed rule, including one public hearing and the submission of written comments. As always, DAIL was prepared to accommodate alternative methods of communication upon request.

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

   DAIL's policy consultant (previous DAIL Deputy Commissioner), DAIL program managers, Health Management Associates (HMA) Consultant, and the State Medicaid Policy Unit have been part of developing language using the current BIP policy manual, HCAR Medicaid rules, federal Medicaid regulations, and CMS Special Terms and Conditions as a guide.

   DAIL program managers have an ongoing close working relationship with BIP Providers. DAIL also considered input gathered from a 2018 federal ACL Traumatic Brain Injury State Partnership Program Grant aimed at improving Vermont's system for brain injury survivors.

   Once a draft of the Rule was completed, DAIL provided it to the following partners on June 4, 2025, for informal input: BIP providers, VT Legal Aid, VT Center for Independent Living, Brain Injury Alliance of VT and the National Association of State Head Injury Administrators (NASHIA).

   Vermont Legal Aid and NASHIA provided written input, which DAIL reviewed and incorporated, in part.

   The proposed Rule was presented to the DAIL Advisory Board for comment.

Proposed Rule: Agency of Human Services – Department of Disabilities, Aging, and Independent Living. Brain Injury Program Rule. This rule proposes to modernize some definitions, add clarity regarding continued clinical eligibility, incorporate a new required Medicaid policy regarding paying legally responsible individuals, insert federally required Electronic Visit Verification, and add an updated Case Management definition, along with a new "Service Broker" service to comply with federally required Conflict-Free Case Management rules.

Presented By: Stuart Schurr, General Council – Department of Disabilities, Aging and Independent Living

Motion made to accept the rule by Jared Adler, seconded by Nicole Dubuque, and passed unanimously with one abstention, Natalie Weill, with the following recommendations:

1) Proposed Filing – Coversheet:
   a. #8: recommend adding the word ‘new’ and adding language clarifying this rule is being adopted from policy and these are the changes.
   b. #10: Explain why the choices being made are not arbitrary.
   c. #12: Clarify where existing requirements can be found.

2) Public Input Maximization Plan
   b. #3: List brain injury program providers.

Public Comment for BI Program:

NOTE: This Public Comment is divided into 2 parts: the first part in bullet points were comments I received from my Peer BI Survivors and the second part is my comments on the 30 page Summary of the BI Program Rule found on the DAIL website.

During my Brain Injury Peer Support Group meeting last night (March 4, 2026), I discussed with them my giving comments for DAIL about the BIP and asked if anyone would like to add their comments to my written comment. All of our members are living in the Chittenden County area. I received several comments and am giving bullet points of what the group asked me to add.

- **Eligibility for the BI Program.**
  - Diagnosis is a BIG problem.
  - Not everyone is diagnosed at the time of their accident or event that caused the TBI/ ABI.
  - Battered persons often go without diagnosis, those folks in the shelters and incarcerated may have suffered a TBI because of Domestic Violence but their behavior is judged as "bad behavior" or "character flaws" and not due to a potential BI
  - Hope for a test (protein biomarkers in the bloodstream was mentioned) to make the call whether or not someone had sustained a BI (a 2020 study reported in J. of Neurology)
  - It's not obvious to the Family or the health professionals (that we suffered a BI) to ensure we get on a path leading to diagnosis
  - Rehabilitation Nurse Facilitator thought the criteria was to become knocked unconscious or suffer a loss of memory. That the person had to exhibit these symptoms before they would be considered for a concussion evaluation.
  - One member failed the testing (responses to testing appeared negative for TBI) but their brain bleeds were seen via MRI or CT (didn't catch)
  - Ways to help Self-recognition or help the Family to recognize symptoms of the BI
  - People do not believe the BI Survivor
- **Administration of BI Program Services**
  - People are not getting referred (to a specialist who evaluates patients for BI)
  - "We need a tree or break down or flow chart to follow a path that will get us a diagnosis"
  - Confusion about the work injury payments the person was receiving and whether they'd be dropped if the person sought out SSDI. They needed help with the application for SSDI.
  - One member saw Neurology immediately during their Emergency Room visit.
  - Outcomes when we do not receive the care we need: imprisonment, bad or violent relationships, ending up in a shelter, homelessness, depression, substance abuse and suicide.
  - ALL of the members agreed that we need an Advocate to help us navigate the system, because we are "not thinking straight" and we need someone to help fight for us.

- One member discussed the process of obtaining specialty Brain Injury care as their struggle to find what they needed, as "demoralizing" and as "a battle".
- Another member described their Care Team as awesome advocates and that they were "fortunate" to have them.
- Someone mentioned the Social Worker is "lost" once someone transitions from rehabilitation to home care
- Someone else discussed "The Notch" that is associated with Northwestern Medical Center and that they receive service from a Nurse who assists with transportation, prescriptions, other
- One person discussed their vulnerability to financial fraud or theft of their life-savings by a family member(s) and the undermining of their character in order for them to win the law case.

Miscellaneous Issues:

- Disability Rights Vermont needs to keep their funding and not be cut.
- We are unsure of whether annual BI Conferences will be held here as they had been in the past.

Comments on the 30 page of the BI Program (Coversheet, Adopting Page, Economic Impact Analysis, Environmental Impact Analysis, etc.)

[Primary Contact Person: Megan Tierney-Ward, megan.tierney-ward@vermont.gov]

Proposed Filing- Coversheet

#8 Concise Summary on page 4: "DAIL has long relied on policies and program standards to determine eligibility for, and to administer, BIP services." *COMMENT:* I am wondering if it has ever occurred to our health care professionals that these gatekeeping policies and programs may be doing more harm than good to BI survivors? "...add clarity regarding continued clinical eligibility" *COMMENT:* Will information connecting the patient's symptoms with the qualified BI care specialist they need to see for treatment be provided to the patient and their family? Will information on the patient's Care Plan and everything that is available to the patient be provided to the patient and their family?

#10 Explanation of How the Rule is not Arbitrary as Defined in 3V.S.A. §801(b)(13)(A): "...and aligns with input gathered from a 2018 federal Administration for Community Living (ACL) Traumatic Brain Injury State Partnership Program Grant aimed at improving Vermont's system for brain injury survivors."
COMMENT: We viewed the results to the 2018 Vermont BI Needs Assessment Survey and thought 1) the wording of the questions could have been designed to better collect data of value and should

be revised in future survey. 2) the survey was not widely distributed and too few respondents had turned in their survey answers. Also, there seemed to be a prevalence of one subpopulation of BI patients over others.

#11 List of People, Enterprises and Government Entities Affected by This Rule on page 5:
COMMENT: missing are the BI Survivors that this program does not include. We are here and we are affected because our needs are not being met by this program.

Adopting Page

NO COMMENT

Economic Impact Analysis

#3 Category of Affected Parties on page 1: "Brain Injury Program Participants- will have increased transparency regarding program standards."

COMMENT: Participants deserve and should be provided more transparency of: criteria to meet for services and treatments, the alternatives to treatments and care that are available to them, options of providers and professionals, "consumer ratings" and patient feedback that previous patients have given, the number of patients with similar medical and mental health conditions as theirs who have been treated at the facility and by the professionals, the details of their care plan.

#6 and #7 Impact on and Compliance of Small Businesses:
COMMENT: Businesses do not provide us the accommodations we require to re-enter the workplace. We experience "the full workload" and all the stresses that come with it as if we never had our TBI. Oftentimes we quit because we cannot keep up with the pace we once did- or what is required of us to perform our duties. We suffer a mental breakdown as a result of trying to keep up with unrealistic expectations, deal with coworker "she's faking it" or other snide remarks. They terminate our job when we (after the TBI) cannot perform the tasks we were hired to do. And they rehire us in a new position that is just as cognitively difficult as the other so we resign. Businesses don't record our firings but find ways to get of us.

#9 Sufficiency: Describe how the Analysis was conducted… The Brain Injury Advisory Board of Vermont had reviewed the 2018 survey results and determined the data collected informational: too few respondents and the wording of the questions did not provide valuable data. "DAIL also considered input gathered from a 2018 federal Administration for Community Living (ACL) Traumatic Brain Injury State Partnership Program Grant aimed at improving Vermont's system for brain injury survivors."
COMMENT:

Environmental Impact Analysis

COMMENT: None

Public Input Maximization Plan

#3 Please Describe the Agency's Strategy to Maximize Public Involvement in the Development of the Proposed Rule...
COMMENT: "DAIL will seek public comment from a broad range of interested parties, including the public,..." I do not see a way to reach the general public- among whom are thousands of BI Survivors- mentioned here. The organizations and agencies listed here are infrequently visited by the general public and they rarely send out communications for the general public's viewing. I see an attempt to communicate only with a select group of BI Survivors, within a bubble. As someone from the BI Survivor community, I heard about the proposed BIP Rule through a newspaper, VTDigger, close to the deadline for requesting a Public Hearing. I only saw the article because I was lucky enough to have scrolled all the way through the online articles to the bottom where it was announced. Otherwise, I would have missed the chance to provide my input. During the design phase, I wonder who voices were included. Neither I nor any of my BI Peers were involved in giving our input. Valuable insights from our lived experiences was not sought after for the planning and design of the Rule. When I asked, I learned that none of my BI Peers knew about the design of the Rule, its change or public comment period, either.

#4 Beyond General Advertisements, Please list the People and Organizations... "DAIL also considered input gathered from a 2018 federal ACL Traumatic Brain Injury State Partnership Program Grant aimed at improving Vermont's system for brain injury survivors."
COMMENT: It sounds like DAIL only takes input from our providers and health professionals who are unarguably prioritizing the costs to providing us care. When you only listen to people who are so focused on efficiency of patient flow and cost reduction, you will only hear perspectives that come from cost savings and balancing their budgets (making do with limited resources by rationing of our care). You will not hear about Patient Safety and Quality of Patient Care- the stories that will only come from the lived experiences of the patients and their families. Again, the 2018 Needs Assessment survey was not well distributed to the public, the information collected was not of high quality, for instance a snapshot of the BI Survivor's care at the moment, and did not accurately reflect the actual needs of BI patients in Vermont.

Brain Injury Program
7.101.1 Purpose and Scope (c) The primary goal of the BIP is to assist a <***select***> group of participants to obtain their optimal level of functioning to successfully resume living and working in their own home community.
COMMENT: Those who are excluded from this select program are left behind to struggle on their own.

7.101.3 General Policies

(b) *COMMENT:* Person -Centered Care should be based on the IPFCC's Core Concepts:

Core Concepts of Patient- and Family-Centered Care

- **Respect and Dignity.** Health care practitioners listen to and honor patient and family perspectives and choices. Patient and family knowledge, values, beliefs and cultural backgrounds are incorporated into the planning and delivery of care.
- **Information Sharing.** Health care practitioners communicate and share complete and unbiased information with patients and families in ways that are affirming and useful. Patients and families receive timely, complete and accurate information in order to effectively participate in care and decision-making.
- **Participation.** Patients and families are encouraged and supported in participating in care and decision-making at the level they choose.
- **Collaboration.** Patients, families, health care practitioners, and health care leaders collaborate in policy and program development, implementation, and evaluation; in facility design; in professional education; and in research; as well as in the delivery of care.

Adapted from: Johnson, B. H. & Abraham, M. R. (2012). *Partnering with Patients, Residents, and Families: A Resource for Leaders of Hospitals, Ambulatory Care Settings, and Long-Term Care Communities.* Bethesda, MD: Institute for Patient- and Family-Centered Care.

(c) *COMMENT:* Providing services in a cost-effective and efficient manner is contradictory to (b) above. Long term support and services has a terrible track record for not providing the services that patients are eligible for and meet the criteria of.
https://aspe.hhs.gov/sites/default/files/documents/31b7d0eeb7decf52f95d569ada0733b4/CCM-TCM-Descriptive-Analysis.pdf

7.101.4 Covered Services
(a through j) *COMMENT:* should be covered services for all BI Survivors- not just those who were selected few enrolled in the BIP.

7.101.5 Eligibility
COMMENT: Again, this is too selective. A 15 yo or younger child should be eligible and many of us BI Survivors aren't clinically assessed (many of us are not assessed until years after the fact) yet we require Long Term Care.

7.101.6 Clinical Eligibility
(a) *COMMENT:* within the last 5 years is crazy knowing that BI symptoms can last a lifetime.
(b) *COMMENT:* almost all of my BI Peers require assistance with four or more of the listed areas (1-10). We don't get accommodations for doing our state and federal tax returns. We are expected to perform the same as the general public. This nation does not run as a caring and nurturing society but as a punitive, rat race of a society.

7.101.8 Continued Eligibility

(a) *COMMENT:* how do we know that whoever is doing the assessment is trauma-informed, recognizes signs and symptoms of BI, can recognize cognitive, sensory, impairments and reduced functioning of the patient? How do we ensure they are NOT ableist, racist, class-biased or unsympathetic to pain?

(b,c) *COMMENT:* How about a BI Survivor is eligible for BI Program for their entire lifetime- regardless of where they are at in the moment? It's not as if it will go away. It's not as if the services we should be receiving are "curing " us.

(d) *COMMENT:* Just goes to show how exclusive, how morally-sick this country is.

7.101.10 Qualified Providers

(a) *COMMENT:* Culturally spiritually appropriate BI providers are not mentioned here.

(c) *COMMENT:* There should be more transparency about: Quality Management Activities as defined by DVHA and DAIL. We are in a time when Patient Safety (https://www.cnbc.com/2016/05/04/medical-errors-are-third-leading-cause-of-death-in-united-states-study.html and https://qualitysafety.bmj.com/content/33/2/109?rss=1) the Quality of Patient Care has hit rock bottom, so I believe it is long over due for our health institutions and facilities to shed some light on their Quality Measures and Standards. The Quality Measures under consideration for CMS to adopt have very little input from patients and patients' families who have been harmed by those same policies and programs. That needs to change.

7.101.17 Quality Assurance and Improvement

COMMENT: A BI peer of mine described their assisted living facility (they had been in a coma a full year after a bicycle accident) as a concentration camp. Whether imagined or misinterpreted, they believed they were surrounded by perpetrators committing crimes. In order to gain our trust, Quality Management Systems should be in close touch with Patients and their Family. Once we've been burnt by the system, the system has essentially lost our trust. Game over.

These are my Public Comments.

VERMONT

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TO: Legislative Committee on Administrative Rules (LCAR)

FROM: Stuart G. Schurr, Esq., General Counsel SGS
Department of Disabilities, Aging & Independent Living (DAIL)

DATE: June 29, 2026

SUBJECT: 26P-001; Final Proposed Rule; *Brain Injury Program Rule*

The Agency of Human Services (AHS) and DAIL seek to adopt a new rule which will govern the administration of the Brain Injury Program (BIP).

A. Background

DAIL has long relied on policies and program standards to determine eligibility for, and to administer, BIP services. DAIL now seeks to codify these policies and standards through the adoption of this new rule, which modernizes some definitions, adds clarity regarding continued clinical eligibility, incorporates a required Medicaid policy regarding paying legally responsible individuals, inserts federally required Electronic Visit Verification, and adds an updated Case Management definition, along with a new "Service Broker" service to comply with federally required Conflict-Free Case Management rules. Once adopted, these BIP Rules will be incorporated into the Health Care Administrative Rules, a set of rules for all Vermont Medicaid services, which is maintained by AHS.

B. Specific Changes

The following chart reflects all changes made to the proposed rule since its filing with the Secretary of State:

Provision, as submitted to Secretary of State	**Description of Change**
Final Proposed Filing- Cover Sheet, Section 17	Added “Brain injury survivors”
Section 7.101.10 Qualified Providers	Added the phrase, “including those related to training,”

C. Public Comments and DAIL's Responses

Four individuals reached out to the Department of Disabilities, Aging & Independent Living (DAIL) during the public comment period. Three of those individuals shared past experiences with brain injury (BI) or wanted to know more about the program, with no specific comments on, or recommendations for, the proposed rule. Information shared by those three individuals was forwarded to the Adult Services Division for individual follow-up as needed.

A fourth individual attended the public hearing on 2/25/26 and submitted written comments on 3/5/26. The written comments included anonymous input from other brain injury survivors about the healthcare system as a whole and the proposed BIP rule. Comments listed below are categorized by system issues and rule-specific recommendations.

Comments	**DAIL Response**
1. System Issues: In summary, comments related to Vermont's healthcare system included: • Obtaining an accurate brain injury diagnosis at time of injury is critical for recovery and treatment but does not always happen. • Obtaining a clear path to services/supports at time of diagnosis is a challenge. • Medical professionals do not always understand brain injury and how to respond to it when they see it. • The Brain Injury Program should be available to all Vermonters with brain injury, not just those who meet the narrow Medicaid program rules. • Input provided on past and future systems surveys. • The goal of cost effectiveness and efficiency is contradictory to person-centered care.	AHS has been working for years to improve the system of brain injury diagnosis and care for Vermonters. Examples of past and current efforts include: • In 2018, DAIL received a State Partnership grant from the federal Health Resources and Funding Administration to expand and enhance the infrastructure of the brain injury system of care in Vermont. The 3-year grant project helped identify causes of injury, age of injury, general gaps in services, and the needs of the state system of providers to support people with brain injury. The grant also supported collaboration with the Department of Corrections in identifying and tracking data related to people with brain injury. • DAIL recently added self/family managed care as a BIP option to increase access to services. • In April 2025, the VT Department of Health, in collaboration with DAIL, published a new data brief on Acquired Brain Injuries among Vermonters to bring greater awareness to BI in Vermont • October 2025, DAIL implemented a new Conflict-Free Case Management system that provides access to 3rd party case management services for all BIP participants. This change

Comments	DAIL Response
	brings additional oversight, eliminates potential conflict of interest, and reduces the length of time people wait for services. • DAIL is expanding the Money Follows the Person (MFP) program to include BIP participants. This expansion will help eligible people transition from institutional stays back into the community. DAIL does not recommend changes to the proposed rule in response to the healthcare system comments.
2. Rule Input: Eligibility should apply to all Vermonters with brain injury.	Any person may apply for the BIP, which is a Medicaid- funded program. All Medicaid programs are subject to federal oversight, which require states to set clear limitations on services, including eligibility criteria. DAIL does not recommend changes to the rule in response to this comment.
3. Rule Input: Eliminate requirement that injury has occurred in last five years.	The intent of the BIP is to focus on early intervention for functional rehabilitation. Five years, as an enrollment window, is used by the program to support the best chance of rehabilitation. People who need long-term services may apply to other programs, such as the Choices for Care program. DAIL does not recommend changes to the proposed rule in response to this comment.
4. Rule Input: Require that providers and state BIP employees are trauma-informed, recognize signs and symptoms of BI, and can recognize cognitive and sensory impairments and reduced functioning of the patient.	DAIL agrees that the skills listed are important. With regard to the Brain Injury Program, section 7.101.10 Qualified Providers, addresses provider requirements. DAIL proposes to insert into the rule a reference to the training requirements currently set forth in the BIP provider manual: "BIP Providers must comply with all program standards, including those related to training, as well as program limitations, as set forth in the BIP Provider Manual." DAIL added the following sentence to the new BIP Manual under Universal Provider Standards: **"DSOs [Direct Service**

Comments	DAIL Response
	Organizations] must ensure that staff employed by the DSO and its subcontractors have been trained to be trauma-informed and can recognize signs and symptoms of BI, as well as cognitive and sensory impairments and reduced functioning of participants." The revised manual will be implemented along with the rule.
5. Rule Input: (Packet Coversheet) "DAIL has long relied on policies and program standards to determine eligibility for, and to administer, BIP services." Has it ever occurred to our health care professionals that these gatekeeping policies and programs may be doing more harm than good to BI survivors?	These rules govern the operations of the Vermont Medicaid Brain Injury Program. All Medicaid programs are subject to federal oversight, which require states to set clear limitations on services, including eligibility criteria. DAIL does not recommend changes to the proposed rule in response to this comment.
6. Rule Input: (Packet Coversheet) "…add clarity regarding continued clinical eligibility" Will information connecting the patient's symptoms with the qualified BI care specialist they need to see for treatment be provided to the patient and their family? Will information on the patient's Care Plan and everything that is available to the patient be provided to the patient and their family?	The proposed "clarity" added to this rule is intended to help providers and participants know exactly how a participant continues to be clinically eligible for the program. With regard to the Care Plan, BIP participants receive their person-centered care plan from their case manager. Additionally, participants and their legal representatives have access to all other program documents upon request. DAIL will ensure that this is clear in the upcoming revised program manual. DAIL does not recommend changes to the proposed rule in response to this comment.
7. Rule Input: (Packet Coversheet) From the list of people affected by the rule, missing are the BI Survivors that this program does not include. We are here and we are affected because our needs are not being met by this program.	The current Coversheet lists BIP participants. DAIL agrees to add "survivors" to the Coversheet.
8. Rule Input: (Packet Economic Impact) Participants deserve and should be provided more transparency of: criteria to meet for services and treatments, the alternatives to treatments and care that are available to them, options of providers and professionals, "consumer ratings" and patient feedback that	The new conflict-free case management system requires that the Case Management Service Organization provide options counseling and program monitoring to all applicants/participants, which will improve transparency and participant feedback from an entity unrelated to the direct service provider.

Comments	DAIL Response
previous patients have given, the number of patients with similar medical and mental health conditions as theirs who have been treated at the facility and by the professionals, the details of their care plan.	Additionally, DAIL is responsible for the quality of the BIP and is committed to making future quality reviews available to the public. Quality management is currently addressed in section 7.101.17 Quality Assurance and Improvement of the proposed rule. DAIL does not recommend changes to the proposed rule in response to this comment.
9. Rule Input: (Packet - Economic Impact Section) Businesses do not provide us with the accommodations we require to re-enter the workplace. We experience "the full workload" and all the stresses that come with it as if we never had our TBI. Oftentimes we quit because we cannot keep up with the pace we once did- or what is required of us to perform our duties. We suffer a mental breakdown as a result of trying to keep up with unrealistic expectations, deal with coworker "she's faking it" or other snide remarks. They terminate our job when we (after the TBI) cannot perform the tasks we were hired to do. And they rehire us in a new position that is just as cognitively difficult as the other so we resign. Businesses don't record our firings but find ways to get of us.	DAIL will share this comment with HireAbility, the division responsible for assisting people with return to work. DAIL does not recommend changes to the proposed rule in response to this comment.
10. Rule Input: (Packet - Public Input Section) "DAIL will seek public comment from a broad range of interested parties, including the public,…" I do not see a way to reach the general public- among whom are thousands of BI Survivors- mentioned here. The organizations and agencies listed here are infrequently visited by the general public and they rarely send out communications for the general public's viewing. I see an attempt to communicate only with a select group of BI Survivors, within a bubble. As someone from the BI Survivor community, I heard about the proposed BIP Rule through a newspaper, VTDigger, close to the deadline for requesting a Public Hearing. I only saw	During the rulemaking process, DAIL has provided copies of the proposed rule to, and has sought targeted input from, Vermont's advocates and providers who engage directly with brain injury survivors and advertised the proposed rule as required. Additionally, as detailed below, DAIL's past engagement with Vermonters continues to inform brain injury policy and rules. 1. In 2018, DAIL received a State Partnership grant from the federal Health Resources and Funding Administration to improve brain injury surveillance and needs assessment in Vermont. The funding resulted in a survey of survivors, family/support people, and health care providers. The survey data helped

Comments	DAIL Response
the article because I was lucky enough to have scrolled all the way through the online articles to the bottom where it was announced. Otherwise, I would have missed the chance to provide my input. During the design phase, I wonder who voices were included. Neither I nor any of my BI Peers were involved in giving our input. Valuable insights from our lived experiences was not sought after for the planning and design of the Rule. When I asked, I learned that none of my BI Peers knew about the design of the Rule, its change or public comment period, either.	identify causes of injury, age of injury, general gaps in services, and the needs of the state system of providers to support people with brain injury. 2. From 2019-2025, DAIL created a plan to implement conflict-free case management in Vermont home and community-based services programs, including the BIP. In creating the plan, DAIL sought public input from BIP participants, advocates and providers. DAIL does not recommend changes to the proposed rule in response to this comment.
11. Rule Input: (Packet – Public Input Section) It sounds like DAIL only takes input from our providers and health professionals who are unarguably prioritizing the costs to providing us care. When you only listen to people who are so focused on efficiency of patient flow and cost reduction, you will only hear perspectives that come from cost savings and balancing their budgets (making do with limited resources by rationing of our care). You will not hear about Patient Safety and Quality of Patient Care- the stories that will only come from the lived experiences of the patients and their families. Again, the 2018 Needs Assessment survey was not well distributed to the public, the information collected was not of high quality, for instance a snapshot of the BI Survivor's care at the moment and did not accurately reflect the actual needs of BI patients in Vermont.	Please see response #10 above. DAIL does not recommend changes to the proposed rule in response to this comment.
12. Rule Input: (Section 7.101.1 Purpose and Scope) Those who are excluded from this select program are left behind to struggle on their own.	Any person may apply for the BIP, which is a Medicaid- funded program. All Medicaid programs are subject to federal oversight, which require states to set clear limitations on services, including eligibility criteria. DAIL does not recommend changes to the proposed rule in response to this comment.

Comments	DAIL Response
13. Rule Input: (Section.101.3 General Policies) Person-Centered Care should be based on the Institute for Patient and Family-Centered Care, core concepts: (Provided).	AHS is required to follow CMS Medicaid regulations regarding person-centered care. DAIL does not recommend changes to the proposed rule in response to this comment.
14. Rule Input: (Section 7.101.4 Covered Services) Should be covered services for all BI Survivors- not just those who were selected few enrolled in the BIP.	Any person can apply for the BIP, which is a Medicaid- funded program. All Medicaid programs are subject to federal oversight, which require states to set clear limitations on services, including eligibility criteria. DAIL does not recommend changes to the proposed rule in response to this comment.
15. Rule Input: (Section 7.101.5 Eligibility) Again, this is too selective. A 15 yo or younger child should be eligible and many of us BI Survivors aren't clinically assessed (many of us are not assessed until years after the fact) yet we require Long Term Care.	Any person can apply for the BIP, which is a Medicaid- funded program. All Medicaid programs are subject to federal oversight, which require states to set clear limitations on services, including eligibility criteria. The state manages other programs for children under age 15. DAIL does not recommend changes to the proposed rule in response to this comment.
16. Rule Input: (Section 7.101.6 Clinical Eligibility) Within the last 5 years is crazy knowing that BI symptoms can last a lifetime.	The intent of the BIP is to focus on early intervention for functional rehabilitation. Five years, as an enrollment window, is used by the program to support the best chance of rehabilitation. People who need long-term services may apply to other programs, such as the Choices for Care program. DAIL does not recommend changes to the proposed rule in response to this comment.
17. Rule Input: (Section 7.101.6 Clinical Eligibility) Almost all of my BI Peers require assistance with four or more of the listed areas (1-10). We don't get accommodations for doing our state and federal tax returns. We are expected to perform the same as the general public. This nation does not run as a caring and nurturing society but as a punitive, rat race of a society.	Any person may apply for the BIP, which is a Medicaid- funded program. All Medicaid programs are subject to federal oversight, which require states to set clear limitations on services, including eligibility criteria. DAIL does not recommend changes to the proposed rule in response to this comment.
18. Rule Input: (Section 7.101.8 Continued Eligibility) How do we know that whoever is doing the assessment is trauma-informed,	Please see response #4 above. Currently, the individual's case manager completes the continued eligibility assessment.

Comments	DAIL Response
recognizes signs and symptoms of BI, can recognize cognitive, sensory, impairments and reduced functioning of the patient? How do we ensure they are NOT ableist, racist, class-biased or unsympathetic to pain?	The Case Management Organization (CMO) is required to be certified by the state. All case managers must follow training and qualification standards set forth in the CMO contract. Further, the State's contracts with the CMOs prohibit the CMOs and their employees, agents, subcontractors and other service providers from discrimination, as set forth in State and Federal law. DAIL does not recommend changes to the proposed rule in response to this comment.
19. Rule Input: (Section 7.101.8 Continued Eligibility) How about a BI Survivor is eligible for BI Program for their entire lifetime- regardless of where they are at in the moment? It's not as if it will go away. It's not as if the services we should be receiving are "curing" us.	These rules govern the operations of the Medicaid Brain Injury Program. All Medicaid programs are subject to federal oversight, which require states to set clear limitations on services, including eligibility criteria. DAIL does not recommend changes to the proposed rule in response to this comment.
20. Rule Input: (Section 7.101.8 Continued Eligibility) Just goes to show how exclusive, how morally-sick this country is.	DAIL does not recommend changes to the proposed rule in response to this comment.
21. Rule Input: (Section 7.101.10 Qualified Providers) Culturally spiritually appropriate BI providers are not mentioned here.	The Case Management Organization (CMO) is required to be certified by the state. All case managers must follow training and qualification standards set forth in the CMO contract. Training includes cultural competency. DAIL does not recommend changes to the proposed rule in response to this comment.
22. Rule Input: (Section 7.101.10 Qualified Providers) There should be more transparency about: Quality Management Activities as defined by DVHA and DAIL. We are in a time when Patient Safety (https://www.cnbc.com/2016/05/04/medical-errors-are-third-leading-cause-of-death-in-united-states-study.html and https://qualitysafety.bmj.com/content/33/2/109?rss=1) the Quality of Patient Care has hit rock bottom, so I believe it is long overdue for our health institutions and facilities to shed some light on their Quality Measures	DAIL agrees that quality management and oversight is critical to the successful delivery of BIP services and positive outcomes for participants. Vermont's new conflict-free case management system requires that the Case Management Organizations provide options counseling and program monitoring to all applicants/participants. This will improve transparency, oversight, and participant feedback from an entity unrelated to the direct service provider.

Comments	DAIL Response
and Standards. The Quality Measures under consideration for CMS to adopt have very little input from patients and patients' families who have been harmed by those same policies and programs. That needs to change.	Additionally, DAIL is responsible for the quality of the BIP and is committed to making future quality reviews available to the public. It is important to note that, to receive federal funding for BIP services, the State must comply with required quality activities mandated by CMS. DAIL does not recommend changes to the proposed rule in response to this comment.
23. Rule Input: (Section 7.101.17 Quality Assurance and Improvement) A BI peer of mine described their assisted living facility (they had been in a coma a full year after a bicycle accident) as a concentration camp. Whether imagined or misinterpreted, they believed they were surrounded by perpetrators committing crimes. In order to gain our trust, Quality Management Systems should be in close touch with Patients and their Family. Once we've been burnt by the system, the system has essentially lost our trust. Game over.	The state licensing agency oversees the licensing and operation of all long-term care facilities, including assisted living residences, through the enforcement of the rules applicable to each facility type. Further, all residents have access to the LTC Ombudsman Program to raise grievances. DAIL does not recommend changes to the proposed rule in response to this comment.

Brain Injury Program

7.101 Brain Injury Program (Insert date of adoption, GCR bulletin number)

7.101.1 Purpose and Scope

(a) The Brain Injury Program operates as a Specialized Program within the State's Global Commitment to Health 1115 Waiver.

(b) The Brain Injury Program is subject to approval by the Centers for Medicare and Medicaid Services (CMS) and is managed in compliance with the Global Commitment to Health Special Terms and Conditions of participation.

(c) The primary goal of the Brain Injury Program is to assist participants to obtain their optimal level of functioning and to successfully resume living and working in their own home community.

7.101.2 Definitions

For the purposes of this rule, the term:

(a) **"Activities of Daily Living"** (ADLs) means dressing, bathing, grooming, eating, toileting, mobility, and physical transfers.

(b) **"Instrumental Activities of Daily Living"** (IADLs) means light housework, laundry, meal preparation, transportation, shopping, communication, medication management, and money management.

(c) **"Applicant"** means a person who has submitted a Brain Injury Program application and whose eligibility status is pending.

(d) **"BIP"** means Brain Injury Program.

(e) **"Brain Injury"** means an insult to the brain, not of degenerative or congenital nature (at birth), the result of either an external physical force or internal cause, that produces an altered mental status causing, changes in behavioral, cognitive, emotional, and/or physical functioning.

(f) **"Case Management"** means assistance to BIP participants and families in planning, developing, choosing, gaining access to, coordinating, and monitoring the provision of medical, social, educational and other services and supports, including planning, advocacy, monitoring and supporting them to make and assess their own decisions. Case management is further defined as assistance to participants in planning, developing, choosing, gaining access to, coordinating, and monitoring the provision of needed services and supports for participants.

(g) **"Crisis Services"** means time-limited services and supports that assist an individual to resolve a severe behavioral, psychological, or emotional crisis safely in their community. This includes 24/7 availability, crisis assessment, support and referral, one-to-one support and case management, hospital diversion programs, mobile outreach, community crisis placements and/or intensive in-home support.

(h) **"DAIL"** means the Department of Disabilities, Aging and Independent Living.

(i) **"Day Habilitation"** means individualized support provided to assist BIP participants to develop skills and social connections. The supports may include teaching and/or assistance in daily living, support to participate in community activities, and building and sustaining healthy personal, family and community relationships. Supports must be provided in accordance with the desires of the individual and their Person-Centered Service Plan and take place within settings that afford opportunities for choice and inclusion that are consistent with federal HCBS rules. Habilitation and Life Skills Aides Supports are covered by this service.

(j) **"Electronic Visit Verification"** (EVV) means a telephone and computer-based system that records information about in-home personal care services provided to BIP participants.

(k) **"Environmental & Assistive Adaptations"** means physical adaptations, devices or technology necessary to ensure health and safety or to enable greater independence.

(l) **"Extraordinary Care"** means care to a BIP participant that exceed[s] the range of activities that a Legally Responsible Individual would normally perform in the household on behalf of an individual without a disability or chronic illness of the same age, and which are necessary to assure the health and welfare of the participant and avoid institutionalization.

(m) **"Fiscal Employer Agent (F/EA)"** means an organization that is qualified under Internal Revenue Service rules to pay taxes and provide payroll services for employers as a fiscal agent and is under contract with the State to handle payroll duties for Shared Living Providers who hire workers and participant and their representatives who are eligible for and choose self-direct care.

(n) **"Habilitation"** means services designed to help BIP participants maintain and improve skills necessary for independent living in home and community settings. These services focus on self-help, socialization, and adaptive skills, aiming to support participants in living successfully in the community.

(o) **"HBEE"** means Health Benefits, Eligibility and Enrollment rules found on the Agency of Human Services website.

(p) **"Health and Wellness Guidelines"** means the standards set by DAIL to maintain health and wellness of all BIP participants, which BIP providers must follow and is maintained in the BIP Provider Manual.

(q) **"Home and Community-Based Services"** means all long-term services and supports provided under these regulations, with the exception of those provided at licensed facilities.

(r) **"Legally Responsible Individual"** means a participant's spouse, or legal guardian, or the biological parent, adoptive parent, or stepparent of a minor child. Legally Responsible Individual does not include a BIP participant's Power of Attorney.

(s) **"Long-Term Services and Supports"** is a general term referring to services covered by the Brain Injury Program 1115 Medicaid Waiver as described in these regulations.

(t) **"Participant"** means a person who is eligible and enrolled in the BIP.

(u) **"Provider"** means an individual, organization, or agency that has been authorized by DAIL to provide BIP services, including Case Management, to eligible BIP participants and has enrolled as a Vermont Medicaid provider.

(v) **"Psychology & Counseling Supports"** means intensive one on one counseling, evaluation, monitoring, support, and medication review and instruction. This is provided by professionals who have experience and expertise in brain injury, and are licensed as a psychiatrist, psychologist, and/or with a masters in psychotherapy or counseling.

(w) **"Residential Habilitation"** means services, supports and supervision provided for participants in and around their residences up to 24 hours a day, seven days a week (24/7). Services include support for participants to acquire and retain life skills and improve and maintain opportunities and experiences for participants to be as independent as possible in their home and community. Services include maintaining health and safety and home modifications required for accessibility related to a participant's disability, including cost effective technology that promotes safety and independence in lieu of paid direct support. Residential Habilitation shall be in compliance with federal Home and Community Based rules which emphasize choice, control, privacy, tenancy rights, autonomy, independence and inclusion in the community.

(x) **"Respite Supports"** means alternative caregiving arrangements for family members or home providers/foster families and the participant being supported, on an intermittent or time limited basis, because of the absence of or need for relief of those persons normally providing the care to the individual, when the individual needs the support of another caregiver.

(y) **"Self-Directed Care"** means when a participant or their surrogate meets requirements and chooses to manage some or all of their BIP services. The participant or their surrogate has the responsibility of hiring his or her own staff and overseeing the administrative responsibilities associated with receiving BIP funding, including contracting for services, developing a service plan, fulfilling the responsibilities of the employer, and planning for back-up support or respite in the case of an emergency.

(z) **"Service Authorization"** means a communication through which BIP services are authorized by DAIL and guides the delivery of services and Medicaid payment.

(aa) **"Shared Living Provider (SLP)"** means a private, unlicensed home that provides support for one or two people unrelated to the provider. SLPs typically have twenty-four hour a day/seven day a week responsibility for the participant who lives with them, though participants may receive other supports during the course of a day (e.g., Day Habilitation, Supported Employment). SLP's operate under a contract with the BIP Provider.

(bb) **"Support Broker Services"** means services that provide technical assistance (TA) to a person in managing self-directed services, including families or surrogates helping participants receiving self-directed care. TA is a process

that involves providing targeted support to the participant through the employer of record, in addressing a skill development need in completing their required employer-related tasks. The services must be delivered in a manner that supplements, but does not duplicate, Case Management.

(cc) **"Supported Employment"** means job placement assistance, job coaching, on- and off-site support, and consultation with employers to support competitive employment in integrated community work settings.

7.101.3 General Policies

(a) BIP services are intended to help participants regain life skills or functions lost because of a brain injury.

(b) BIP services shall be based on person-centered planning and shall be designed to ensure quality and protect the health and welfare of the participants receiving services.

(c) BIP services must be provided in a cost-effective and efficient manner, preventing duplication, unnecessary costs, and unnecessary administrative tasks.

(d) BIP services must comply with federal Home and Community-Based Services (HCBS) regulations regarding person-centered planning, conflict of interest and setting requirements found in 42 CFR § 441 Subpart G.

(e) DAIL shall administer the BIP in accordance with these regulations, the CMS Special Terms and Conditions, and applicable state and federal law.

(f) Applicants shall be informed of feasible service alternatives.

(g) DAIL encourages any applicant or participant who disagrees with a decision made by the State to contact the State program staff who made the decision and try to resolve the disagreement informally.

7.101.4 Covered Services

(a) Case Management,

(b) Crisis Supports,

(c) Day Habilitation,

(d) Environmental & Assistive Adaptations,

(e) Psychology and Counseling Supports,

(f) Residential Habilitation,

(g) Respite Supports,

(h) Self-Directed Care,

(i) Support Broker Services,

(j) Supported Employment.

Detailed service standards and limitations are maintained by DAIL in the BIP Provider Manual.

7.101.5 Eligibility

Eligible participants must be a Vermont resident 16 years or older and meet clinical eligibility and Long-Term Care Medicaid financial, non-financial, and categorical eligibility.

7.101.6 Clinical Eligibility

Clinical eligibility determinations are completed by DAIL within 30 calendar days from DAIL's receipt of the BIP application using the following criteria:

(a) The applicant must be diagnosed with a documented brain injury that has occurred within the last five years.

(b) The applicant must require habilitation as a result of their brain injury, in four or more of the following assessed areas of need:

(1) Physical development and mobility,

(2) Communication / cognitive skills,

(3) Eating,

(4) Food preparation,

(5) Personal hygiene/grooming,

(6) Health and safety,

(7) Social behavior,

(8) Activities of daily living / household chores,

(9) Budgeting / numerical skills,

(10) Vocational skills.

(c) Applicants with a documented diagnosis of substance use disorder must agree to participate in a treatment program.

7.101.7 Financial, Non-Financial, and Categorical Eligibility

The financial, non-financial, and categorical eligibility follows the Medicaid rules for traditional and Long-Term Care eligibility found in the HBEE rules on the Agency of Human Services website.

7.101.8 Continued Eligibility

(a) Eligibility is reassessed by DAIL and DVHA at a minimum, on an annual basis using the standards set forth in the BIP provider manual and HBEE rules.

(b) For continued eligibility, participants must:

(1) Meet the clinical eligibility in section 7.101.6 (b) and (c), and

(2) Meet the Long-Term Care Medicaid financial, non-financial, and categorical eligibility, and

(3) Continue to actively engage in BIP services.

(c) Participants that no longer meet continued eligibility criteria will be notified in writing with appeal rights.

(d) When a participant is no longer clinically eligible for the BIP, DAIL may consider granting continued clinical eligibility under the following special circumstances:

(1) The participant has been assessed by DAIL to require continued services to maintain health and safety, and

(2) Alternative programs/services are unable to meet the participant's unique needs as clearly documented in Case Management provider and BIP Provider case notes, and

(3) Discontinuing BIP services would put the participant at imminent risk of harm, institutionalization or homelessness within 45-days, and

(4) The participant or their representative(s) agree that continued participation in the BIP is needed.

7.101.10 Qualified Providers

(a) All Brain Injury Program (BIP) Providers must be pre-approved by the DAIL and shall abide by applicable laws, regulations, policies and procedures. The DAIL may terminate the provider status of an agency, organization, or individual that fails to do so. Provider enrollment information may be found on the Adult Services Division provider enrollment webpage.

(b) BIP Providers must comply with all program standards, including those related to training, as well as program limitations, as set forth in the BIP Provider Manual.

(c) BIP Providers must participate in quality management activities as defined by the DVHA and DAIL.

(d) BIP Providers must comply with federal Home and Community-Based Services (HCBS) regulations regarding person-centered planning, conflict of interest and setting requirements 42 CFR § 441 Subpart G.

7.101.11 Authorization

(a) Eligibility Notification: All eligible applicants will receive a Notice of Decision from the Department of Vermont Health Access (DVHA) that communicates the financial, non-financial, and categorical eligibility for Medicaid and program eligibility for the Brain Injury Program. Rules governing notices are fully set forth in Health Care Administrative Rule (HCAR) 8.100.

(b) DAIL Service Authorization: All eligible participants will receive a notice from DAIL authorizing the number of services and start dates. The DAIL notification will include:

(1) The basis for the decision,

(2) The legal authority for the decision,

(3) The right to appeal,

(4) Information on how to file an appeal.

7.101.12 Choice of Provider

(a) The BIP participants' case manager must provide unbiased service options to the participant and their representative(s).

(b) The participant may choose to receive their services from any participating BIP provider that offers services in their region of the state.

(c) The BIP provider, with the consent of the participant, may subcontract with another qualified entity to provide some or all of the authorized services. To do so, the BIP Provider must follow the standards found in the BIP Provider Manual.

(d) Eligible BIP participants may choose to self-manage services following the standards found in the BIP Provider Manual.

7.101.13 Payment to Legally Responsible Individuals

Brain Injury Program

(a) Payment may be granted to Legally Responsible Individuals to provide the following services:

(1) Day Habilitation, and

(2) Respite Support

(b) Payments may be granted upon a determination that:

(1) The payment will otherwise meet the goals of the Brain Injury Program, and

(2) The payment is necessary to protect or maintain the health, safety, or welfare of the participant.

(c) Requests to pay Legally Responsible Individuals may be submitted at any time.

(d) Requests must be submitted by the participants' Case Manager in writing to DAIL and include:

(1) A description of the participant's specific unmet need(s) for which the request is necessary,

(2) An explanation of why the unmet need(s) cannot be met, and other options that have been explored, and

(3) A description of the actual/immediate risk posed to the participant's health, safety, or welfare.

(4) Payment requests must include the following key components:

(A) Honoring the participant's choice,
(B) Providing a confidential outlet for the participant to voice preference,
(C) Ensuring the participant's health and safety is being appropriately met,
(D) Lack of or limited availability of qualified staff,
(E) Culturally and linguistically appropriate care,
(F) Maintenance of unpaid family time,
(G) Involvement of the person's circle of support, and
(H) Process to review the efficacy of the arrangement and ongoing need to continue to have Legally Responsible Individuals as paid caregivers.

(e) Legally Responsible Individuals may be paid to provide care to a BIP participant due to one or more of the following:

(1) A lack of qualified direct support professionals or independent direct support workers, resulting in consistent gaps in services provision for 45 consecutive calendar days or more.

(A) This is defined as the participant receiving less than 50% of authorized Day Habilitation or Respite Support services for 45 or more consecutive days.
(B) This is reviewed and documented by the case manager.

(2) Complex support needs, as defined by the need for:

(A) 2:1 staffing,
(B) Clinical/psychiatric oversight,
(C) Cognitive status is assessed to fall within the ILA (Independent Living Assessment) to be "severely impaired" ability to make decisions regarding tasks of daily life,
(D) Requires 24/7 supervision or oversight.

(3) Communication support needs, as defined by the need for:

(A) Access to community aids, devices, programs, or other assistive technology,
(B) Communication plan,
(C) Consistent access to interpreters, facilitators, etc.

Payment to a Legally Responsible Individual, alongside another caregiver, is allowable to provide support when the BIP participant requires 2:1 care.

(f) Non-Covered Services: Legally Responsible Individuals shall not be paid to provide the following BIP services.

(1) Case Management,

(2) Crisis Services,

(3) Environmental & Assistive Adaptations,

(4) Fiscal Employer Agent,

(5) Psychology & Counseling Supports,

(6) Residential Habilitation,

(7) Support Broker Services,

(8) Supported Employment.

(g) Oversight and Review

(1) The arrangement will be reviewed periodically to ensure that it continues to meet the desires and best interests of the BIP participant. The frequency of reviews will depend on the BIP participant's circumstances and may be as frequent as monthly (30-days) but no less frequent than bi-annually (6-months).

(2) Reviews will be completed by:

(A) Case Manager—through monthly in-home/in-person visits, which may include unannounced home visits.
(B) Adult Services Division Quality Management Unit—through an in-person/in-home visit as part of the provider agency's annual onsite quality services review process.

(3) Monthly in-home/in-person visits by the case manager should occur independently to allow maximum opportunity to assess the arrangement. The Legally Responsible Individual cannot deny the Case Manager access to the home.

(4) During the monthly review, the case manager must document efforts made to move away from reliance on Legally Responsible Individuals as paid support. These efforts should include recruitment of direct support workers, community integration activities, expansion of the participant's circle of support, discussions with the participant about the arrangement and desire to have it continue, and alternative options.

(5) Documentation of the monthly review must include how the family maintains unpaid family time, how the case manager supports the participant and how the participant's voice is heard and respected and the next steps for the next review period.

(h) Payments

(1) Legally Responsible Individuals may be compensated under the following conditions:

(A) The Legally Responsible Individual must provide an attestation, to be kept on file by the Case Manager and reviewed at the agreed upon intervals, that community and/or in-home family services are unavailable due to significant and recurring barriers.
(B) The Legally Responsible Individual must provide an attestation, to be kept on file by the Case Manager and reviewed at the agreed upon intervals, that they are able to deliver the community and/or in-home family services as indicated in the person-centered care plan.
(C) The Legally Responsible Individual will be paid according to the existing employer and employee relationship as outlined in the ARIS employer handbook.
(D) The Legally Responsible Individual must complete all required Fiscal Employer/Agency (FE/A, i.e., ARIS Solutions) paperwork and be an approved BIP employee prior to submitting timesheets and being paid for care provided.
(E) The Legally Responsible Individual must perform the work that any other direct support staff would be required to do, based on job duties and Person-Centered Plan goals.
(F) Legally Responsible Individuals will only be paid for services authorized within the participant's budget. If the number of hours submitted exceeds the total amount available in the budget to pay the Legally Responsible Individual, the Legally Responsible Individual may receive partial or no payment.
(G) Legally Responsible Individuals must be paid the current Collectively Bargained minimum rate (Collective Bargained minimum wage plus associated employer tax rate), not a flexible rate.
(H) Refusal to accept available qualified workers does not support continued payment of a Legally Responsible Individual.

(2) Case Managers are responsible for submitting payment authorizations for services provided by Legally Responsible Individuals pursuant to a BIP participant's authorized service plan.

(3) Payments will not exceed authorized service levels. Case Managers must ensure payment authorizations are within the scope of the approved service plan for the BIP participant.

7.101.14 Terminations

(a) A participant may voluntarily withdraw from the BIP at any time for any reason.

(b) The state may terminate a participant's enrollment from the BIP for the following reasons:

(1) Clinical ineligibility,

(2) Medicaid financial, non-financial, and categorical ineligibility,

(3) Participant death,

(4) Stay out of state- exceeding 30 continuous days,

(5) Non-utilization of all BIP services, including case management, for more than six (6) consecutive months. This does not include non-utilization of services for the reason of BIP Provider staff shortages.

(c) In limited situations, a BIP Provider may terminate or reduce a service for one or more of the following reasons:

(1) Non-payment of patient share by the participant or authorized representative,

(2) The participant has requested that the service(s) be discontinued,

(3) The participant has moved out of the provider's designated service area,

(4) The participant chooses another provider,

(5) The participant, primary caregiver or other person in the home has exhibited behavior, including, but not limited to, physical abuse, sexual harassment, verbal threats or abuse or threatening behavior that poses a safety risk to agency staff,

(6) The provider no longer provides the service(s) or discontinues operation.

Prior to termination of services, the BIP Provider must consult with the DAIL program staff. Once a decision has been made to terminate services, the BIP provider must notify the participant in writing according to section 7.101.16. Services may resume if the reason for termination or reduction of services has been remedied, and the participant wishes to continue services.

(e) BIP Providers, in collaboration with case managers, must provide transition planning and assistance to the participants when services are reduced or terminated.

(f) A BIP Provider's action to terminate or reduce a service does not affect a participant's enrollment in the BIP.

(g) If the participant requires continued support after disenrolling (aka graduating) from BIP services, DAIL, the case manager, and the BIP provider will work with the participant and their representative(s) to develop a transition plan to other programs such as Choices for Care.

7.101.15 Limitations

(a) The BIP shall not provide or pay for services to meet needs that can be adequately met by services available through other sources. This includes but is not limited to Medicare, Medicaid, private insurance coverage and public vocational rehabilitation programs.

(b) This program is designed to supplement, not replace the educational services that a student is entitled to under all Federal and State Laws and Regulations.

(c) Except as specified in the Section 7.101.13, payment will not be issued for services provided by Legally Responsible Individuals.

(d) Detailed standards and limitations are maintained in the BIP Provider Manual.

7.101.16 Appeals, Grievances and Fair Hearings

(a) When decisions are made by the Medicaid program:

(1) The responsibilities of the Vermont Medicaid Program concerning the grievance and internal appeal system for Medicaid beneficiaries seeking coverage for the Brain Injury Program services are set forth in the Health Care Administrative Rule (HCAR) 8.100. The rule also sets forth requirements for Notices of an Adverse Benefit Determination, continuing services pending appeal and potential beneficiary liability, and responsibilities regarding State fair hearings.

(2) For rules that govern Medicaid applicant and beneficiary appeals regarding financial, non-financial, categorical and clinical eligibility for the Brain Injury Program, refer to Health Benefit Eligibility and Enrollment Rules (HBEE) Part 8 (State fair hearings/expedited eligibility appeals). HBEE Part 8 also sets forth the requirements for maintaining benefits/eligibility pending a State fair hearing. HBEE Part 7 (Section 68.00) contains the requirements for notices of an adverse action.

(b) When decisions are made by a provider to terminate or reduce services, as authorized by Section 7.101.14(c) of this rule, the provider must send a written notice to the participant containing the reasons for the action, the effective date of the action, the right to have services continue pending resolution of the appeal, and appeals rights. Requirements

for the timing and content of the provider notices can be found in HCAR 8.100 and in the Brain Injury Program manual.

(c) Decisions made by a provider to terminate or reduce services for reasons not specified in Section 7.101.14(c) of this rule are subject to the grievances process set forth in HCAR 8.100. This includes, but is not limited to, situations where an agency's staffing capacity limits its ability to provide all the hours of service identified in an individual's person-centered plan.

7.101.17 Quality Assurance and Improvement

(a) The State shall maintain a quality management system that complies with federal Global Commitment 1115 Special Terms and Conditions and Comprehensive Quality Strategy.

(b) The quality management system shall include elements of discovery, remediation, and improvement.

(c) The system shall include, but is not limited to, the following:

(1) Methods of ensuring the participant's health and welfare,

(2) A process for receiving and responding to complaints and grievances,

(3) A process for receiving feedback from service participants and family members,

(4) A process for monitoring provider performance, including incident reports,

(5) A process for responding to suspicions of fraud,

(6) A process for ensuring that suspected abuse, neglect and exploitation is reported and addressed.

(d) Service providers shall comply with the requirements of the quality management system, including certification procedures established by the State.

(e) Service providers chosen to participate in the annual Payment Error Rate Measure (PERM) audit by the Centers for Medicare and Medicaid Services (CMS) must respond to all requests within the timeline provided.

7.101.18 Electronic Visit Verification

(a) Home and Community-Based Services that include personal care or similar services must use a Vermont Medicaid authorized EVV system. For the purpose of this section, personal care or similar services means hourly services provided to the BIP participant to acquire, maintain and promote skills related to independent living, including activities of daily, instrumental activities of daily living, navigation and engagement of community, and coordination

of and participation in personal appointments. For the BIP, these services are provided within the "Day Habilitation" and "Respite Supports" services.

(b) The following information must be collected when utilizing EVV:
(1) Type of service performed,

(2) Date of service delivery,

(3) Start time and end time of service delivery,

(4) Location of service delivery,

(5) Name of the service provider,

(6) Name of the BIP Participant.

(c) EVV is not required under the following conditions:

(1) When services are provided entirely outside of the BIP participant's home, or

(2) When the provider of services lives in the home with the BIP participant.

The Vermont Statutes Online

The Statutes below include the actions of the 2025 session of the General Assembly.

NOTE: The Vermont Statutes Online is an unofficial copy of the Vermont Statutes Annotated that is provided as a convenience.

Title 3 : Executive

Chapter 025 : Administrative Procedure

Subchapter 001 : GENERAL PROVISIONS

(Cite as: 3 V.S.A. § 801)

§ 801. Short title and definitions

(a) This chapter may be cited as the “Vermont Administrative Procedure Act.”

(b) As used in this chapter:

(1) “Agency” means a State board, commission, department, agency, or other entity or officer of State government, other than the Legislature, the courts, the Commander in Chief, and the Military Department, authorized by law to make rules or to determine contested cases.

(2) “Contested case” means a proceeding, including but not restricted to rate-making and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.

(3) “License” includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law.

(4) “Licensing” includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(5) “Party” means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(6) “Person” means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(7) “Practice” means a substantive or procedural requirement of an agency, affecting one or more persons who are not employees of the agency, that is used by the agency in the discharge of its powers and duties. The term includes all such requirements, regardless of whether they are stated in writing.

(8) “Procedure” means a practice that has been adopted in writing, either at the election of the agency or as the result of a request under subsection 831(b) of this

title. The term includes any practice of any agency that has been adopted in writing, whether or not labeled as a procedure, except for each of the following:

(A) a rule adopted under sections 836-844 of this title;

(B) a written document issued in a contested case that imposes substantive or procedural requirements on the parties to the case;

(C) a statement that concerns only:

(i) the internal management of an agency and does not affect private rights or procedures available to the public;

(ii) the internal management of facilities that are secured for the safety of the public and the individuals residing within them; or

(iii) guidance regarding the safety or security of the staff of an agency or its designated service providers or of individuals being provided services by the agency or such a provider;

(D) an intergovernmental or interagency memorandum, directive, or communication that does not affect private rights or procedures available to the public;

(E) an opinion of the Attorney General; or

(F) a statement that establishes criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections, in settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if disclosure of the criteria or guidelines would compromise an investigation or the health and safety of an employee or member of the public, enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons that are in an adverse position to the State.

(9) “Rule” means each agency statement of general applicability that implements, interprets, or prescribes law or policy and that has been adopted in the manner provided by sections 836-844 of this title.

(10) “Incorporation by reference” means the use of language in the text of a regulation that expressly refers to a document other than the regulation itself.

(11) “Adopting authority” means, for agencies that are attached to the Agencies of Administration, of Commerce and Community Development, of Natural Resources, of Human Services, and of Transportation, or any of their components, the secretaries of those agencies; for agencies attached to other departments or any of their components, the commissioners of those departments; and for other agencies, the chief officer of the agency. However, for the procedural rules of boards with quasi-judicial powers, for the Transportation Board, for the Vermont Veterans’ Memorial Cemetery Advisory Board, and for the Fish and Wildlife Board, the chair or executive secretary of the board shall be the adopting authority. The Secretary of State shall be the adopting authority for the Office of Professional Regulation.

(12) “Small business” means a business employing no more than 20 full-time employees.

(13)(A) “Arbitrary,” when applied to an agency rule or action, means that one or more of the following apply:

(i) There is no factual basis for the decision made by the agency.

(ii) The decision made by the agency is not rationally connected to the factual basis asserted for the decision.

(iii) The decision made by the agency would not make sense to a reasonable person.

(B) The General Assembly intends that this definition be applied in accordance with the Vermont Supreme Court’s application of “arbitrary” in Beyers v. Water Resources Board, 2006 VT 65, and In re Town of Sherburne, 154 Vt. 596 (1990).

(14) “Guidance document” means a written record that has not been adopted in accordance with sections 836-844 of this title and that is issued by an agency to assist the public by providing an agency’s current approach to or interpretation of law or describing how and when an agency will exercise discretionary functions. The term does not include the documents described in subdivisions (8)(A) through (F) of this section.

(15) “Index” means a searchable list of entries that contains subjects and titles with page numbers, hyperlinks, or other connections that link each entry to the text or document to which it refers. (Added 1967, No. 360 (Adj. Sess.), § 1, eff. July 1, 1969; amended 1981, No. 82, § 1; 1983, No. 158 (Adj. Sess.), eff. April 13, 1984; 1985, No. 56, § 1; 1985, No. 269 (Adj. Sess.), § 4; 1987, No. 76, § 18; 1989, No. 69, § 2, eff. May 27, 1989; 1989, No. 250 (Adj. Sess.), § 88; 2001, No. 149 (Adj. Sess.), § 46, eff. June 27, 2002; 2017, No. 113 (Adj. Sess.), § 3; 2017, No. 156 (Adj. Sess.), § 2.)

VERMONT

Proposed Rules Postings
A Service of the Office of the Secretary of State

Search Rules

Deadline For Public Comment

Deadline: Apr 10, 2026

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

Rule Details

Rule Number:	26P004
Title:	Refugee Medical Assistance Rule Update.
Type:	Standard
Status:	Proposed
Agency:	Agency of Human Services
Legal Authority:	3 V.S.A. § 801(b)(11)
Summary:	This proposed rulemaking amends the Refugee Medical Assistance rule which was last amended effective November 1, 2019. This proposed rule establishes criteria and process used to determine eligibility and provide coverage under the Refugee Medical Assistance program. Updates to this rule are strictly formal, adopting the federal APA outline standard, as required for implementation within the Agency's upcoming eligibility and enrollment technology system. There are no substantive changes to this rule.
Persons Affected:	Refugees; U.S. Committee for Refugees and Immigrants local field office; Eligibility and enrollment assisters, including agents and brokers; health care providers; Advocacy and community-based organizations that represent or serve refugees, including the Refugee & Immigrant Service Provider Network; and Agency of Human Services including its departments.

Economic Impact:	There are no additional costs associated with this rule because the amendments largely reflect existing practice and coverage policies for Refugee Medical Assistance in Vermont.
Posting date:	Mar 04,2026

Hearing Information

Information for Hearing # 1

Hearing date:	04-03-2026 09:00 AM ADD TO YOUR CALENDAR
Location:	Waterbury State Office Complex, Building A
Address:	280 State Drive
City:	Waterbury
State:	VT
Zip:	05671
Hearing Notes:	Also virtually via MS Teams at: https:// teams.microsoft.com/meet/28170449392 09? p19hARI6hD5dpHtGPbN

Information for Hearing # 2

Hearing date:	04-03-2026 09:00 AM ADD TO YOUR CALENDAR
Location:	Virtually via MS Teams
Address:	https://teams.microsoft.com/meet/28170449392 09? p19hARI6hD5dpHtGPbN
City:	n/a
State:	VT
Zip:	n/a
Hearing Notes:	Virtually via MS Teams at: https://teams.microsoft.com/ meet/28170449392 09?p19hARI6hD5dpHtGPbN

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:	Tracy Dolan
Agency:	Agency of Human Services
Address:	280 State Drive, Center Building
City:	Waterbury
State:	VT
Zip:	05676
Telephone:	802-233-1117
Fax:	802-241-0450
Email:	Tracy.Dolan@vermont.gov SEND A COMMENT
Website Address:	https://humanservices.vermont.gov/rules-policies/health-care-rules 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:	Gabriel Epstein
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SEND A COMMENT

Keyword Information

Keywords:

Refugee
Medical Assistance
Health Benefit
Refugee Resettlement
RMA

Back

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	Newport Daily Express (jlafoe@newportvermontdailyexpress.com)	Tel: 334-6568 FAX: 334-6891 Attn: Jon Lafoe
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	Vermont Lawyer (hunter.press.vermont@gmail.com)	Attn: Will Hunter
	VT Digger (legals@vtdigger.org)	Attn: Legals

FROM: APA Coordinator, VSARA **Date of Fax:** June 18, 2026

RE: The "Proposed State Rules " ad copy to run on **March 12, 2026**

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, 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).

Refugee Medical Assistance Rule Update.

Vermont Proposed Rule: 26P004

AGENCY: Agency of Human Services

CONCISE SUMMARY: This proposed rulemaking amends the Refugee Medical Assistance rule which was last amended effective November 1, 2019. This proposed rule establishes criteria and process used to determine eligibility and provide coverage under the Refugee Medical Assistance program. Updates to this rule are strictly formal, adopting the federal APA outline standard, as required for implementation within the Agency's upcoming eligibility and enrollment technology system. There are no substantive changes to this rule.

FOR FURTHER INFORMATION, CONTACT: Tracy Dolan, Agency of Human Services, 280 State Drive, Center Building Waterbury VT 05676 Tel: 802-233-1117 Fax: 802-241-0450 E-Mail: Tracy.Dolan@vermont.gov URL: https://humanservices.vermont.gov/rules-policies/health-care-rules.

FOR COPIES: Gabriel Epstein, Agency of Human Services, 280 State Drive, Center Building, Waterbury VT 05676 Tel: 802-585-5925 Fax: 802-241-0450 E-Mail: gabriel.epstein@vermont.gov.

Third Party Liability.

Vermont Proposed Rule: 26P005

AGENCY: Agency of Human Services

CONCISE SUMMARY: This rule, Medicaid Covered Services Rule 7108 Third Party Liability, is being amended to remove the estate recovery language and adopt that language into a new rule. Estate recovery is a federal requirement for states to recover certain Medicaid benefits paid on behalf of a Medicaid enrollee from the individual's estate. This rule is not being amended other than to remove the estate recovery section.

FOR FURTHER INFORMATION, CONTACT: Beth Quill, Agency of Human Services (AHS), Department of Vermont Health Access (DVHA) 280 State Drive, Waterbury, VT 05671-1000 Tel: 802-585-5415 Fax: 802-241-0260 E-Mail: Beth.Quill@vermont.gov URL: https://humanservices.vermont.gov/rules-policies/health-care-rules/health-care-administrative-rules-hcar.

FOR COPIES: Susan Coburn, Agency of Human Services, 280 State Drive, Waterbury, VT, 05671-1000 Tel: 802-578-9412 Fax: 802-241-0450 E-Mail: Susan.Coburn@vermont.gov.

Estate Recovery.

Vermont Proposed Rule: 26P006

AGENCY: Agency of Human Services

CONCISE SUMMARY: This new rule, "Estate Recovery," outlines the Medicaid Estate Recovery Procedure. Estate recovery is a federal requirement for states to recover certain Medicaid benefits paid on behalf of a Medicaid enrollee from the individual's estate. The rule needs to be updated to be added to the Health Care Administrative Rules (HCAR). The rule amends the estate recovery provisions from Medicaid Covered Services Rule 7108 "Third Party Liability". The amendments in this new rule include adding a definitions section for clarity and increasing the undue hardship estate value threshold.

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