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*Agency of Human Services*

## MEMORANDUM

**To:** Sen. Mark A. MacDonald, Chair, Legislative Committee on Administrative Rules

**From:** Mark Larson, Commissioner of the Department of Vermont Health Access

**Cc:** Doug Racine, Secretary, Agency of Human Services  
Dave Yacovone, Commissioner, Department for Children and Families

**Date:** June 26, 2014

**Re:** Health Benefits Eligibility and Enrollment Final Proposed Rule Filing (14P014)

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On March 21, 2014, the Department for Children and Families filed the proposed rule implementing the latest Affordable Care Act regulations for Vermont Health Connect and Vermont's Medicaid and Dr. Dynasaur programs. This rule was the same as the emergency rule filed on March 31, 2014.

Around that time, several new federal regulations were finalized. Many of the new provisions in the final proposed rule incorporate the latest federal rules. DCF held a public hearing and had a notice and comment period for this rule. During that time, approximately 200 public comments were submitted. DCF and DVHA followed up with stakeholders who provided feedback and incorporated many of their suggestion into the rule. The final proposed rule was filed on June 11, 2014. This rule is not the end of our rulemaking process and we anticipate further refinement to these rules going forward as we receive more federal guidance and continue to work with stakeholders.

There are a few issues raised during the comment period along with new provisions in the rule we wanted to bring to your attention:

Medicaid covered long-term care services/eligibility requirements for "Choices for Care" (CFC)

Vermont Legal Aid (VLA) commented that there has been a recent shift in policy regarding an individual's eligibility for Medicaid covered long-term care services under the Choices for Care (CFC) waiver program. VLA asserts that DCF is imposing a new categorical eligibility requirement in addition to clinical eligibility. There is no new requirement. Categorical eligibility has always been part of the CFC waiver program in accordance with federal law.

We are requesting that the Committee approve this rule as drafted because there is no new eligibility requirement. As a result, there are no statutory grounds for objection referenced in 3 V.S.A. § 842 that are applicable to this proposed rule, i.e. the proposed rule is not beyond the authority of the agency, is not contrary to the intent of the legislature, and is not arbitrary. We have met with VLA extensively on this issue and we will continue to meet with VLA to discuss this issue and explain the federal law that guides Vermont in determining long-term care Medicaid eligibility.

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### Need for system to quickly implement changes

Multiple stakeholders requested that DVHA and DCF implement a system outside of the formal rulemaking process to quickly implement federal guidance and regulations and to issue other guidance. DCF and DVHA are currently working on a process to address these needs.

### Open enrollment for small employers

CMS previously told us that we had to align the employer election period with the November 15 open enrollment date for individuals. This would create an unworkable timeline for businesses. We worked with CMS to move the employer election period to October 15, but CMS made it clear that they could not move this deadline any further. We will work with carriers to ensure that employees receive January 1st coverage.

### Terminations for small employers

VHC is developing a more detailed policy around enrollment and terminations in July. Stakeholders will be consulted. Once the policy is set, the relevant details will be put in the rule. Federal regulations do not require states to have a policy around terminations until January 1, 2015. Stakeholders agree that it is better to work on the termination language than keep as is.

### Special enrollment periods (SEP) - avoiding gaps in coverage

VLA requested more flexible special enrollment periods. We have made our special enrollment periods as flexible as possible under current federal law. To go further, we would need special permission from CMS and the issuers. We are weighing all of the options available to us.

### **Conclusion**

We have many other updates and clarifications to the HBEE rules in this final proposed rule that are explained in great detail in our responsiveness summary, *Description for Decisions on Public Comments and Explanation of Changes to Health Benefits Eligibility and Enrollment Final Proposed Rule (14P014)*. This memo sets forth some of the key issues raised during the rulemaking public comment period.

In our extensive outreach with stakeholders on this proposed rule, other issues have been raised that we have come to agreement on with stakeholders. We will be presenting these agreed upon changes at the LCAR hearing.

If you have any questions about these comments and/or changes to the HBEE rules, please do not hesitate to contact me.