

1 H.279

2 Introduced by Representative Houghton of Essex

3 Referred to Committee on

4 Date:

5 Subject: Health; Department of Vermont Health Access; Vermont Health

6 Benefit Exchange; Medicaid; Vermont Prescription Monitoring

7 Program; rulemaking

8 Statement of purpose of bill as introduced: This bill proposes to allow the  
9 Secretary of Human Services to adopt emergency rules if new State or federal  
10 law or guidance requires the State to adopt or amend its rules regarding  
11 Medicaid or the Vermont Health Benefit Exchange in a time frame that cannot  
12 be accomplished using the regular rulemaking process. It would eliminate the  
13 duty of the Vermont Health Benefit Exchange to collect Exchange plan  
14 premium payments and would remove a visit limit for preventive dental  
15 services in the Medicaid program. The bill would allow the Director of  
16 Pharmacy Services for the Department of Vermont Health Access or designee,  
17 and a designee of the Department's Medical Director, to query the Vermont  
18 Prescription Monitoring System. It would also consolidate the Department of  
19 Vermont Health Access's prescription drug program reporting requirements,  
20 remove a requirement that the Department report proposed changes to the  
21 Medicaid preferred drug list or the Department's drug utilization review

1 procedures to the General Assembly prior to implementation, and eliminate a  
2 requirement that the Department submit proposed rules on its pharmaceutical  
3 assistance programs to a legislative committee for review and advice.

4 An act relating to miscellaneous changes affecting the duties of the  
5 Department of Vermont Health Access

6 It is hereby enacted by the General Assembly of the State of Vermont:

7 ~~\*\*\* Rulemaking Authority \*\*\*~~

8 Sec. 1. 33 V.S.A. § 1810 is amended to read:

9 § 1810. RULES

10 The Secretary of Human Services may adopt rules pursuant to 3 V.S.A.  
11 chapter 25 as needed to carry out the duties and functions established in this  
12 subchapter and to conform the operation of the Vermont Health Benefit  
13 Exchange to federal guidance and regulations. The Agency may use the  
14 emergency rules process set forth in 3 V.S.A. § 844 but only in the event that  
15 new State or federal law or guidance requires Vermont to adopt or amend its  
16 rules in a time frame that cannot be accomplished under the traditional  
17 rulemaking process. An emergency rule adopted under these exigent  
18 circumstances shall be deemed to meet the standard for the adoption of  
19 ~~emergency rules under 3 V.S.A. § 844(s).~~

1 ~~Sec. 2. 33 V.S.A. § 1001(e)(1) is amended to read:~~

2       ~~(e)(1) The Secretary of Human Services or designee shall take appropriate~~  
3 ~~action, including making of adopting rules, required to administer a medical~~  
4 ~~assistance program under Title XIX (Medicaid) and Title XXI (SCHIP) of the~~  
5 ~~Social Security Act. The Secretary may adopt rules in accordance with~~  
6 ~~3 V.S.A. chapter 25 to conform Vermont's rules regarding health care~~  
7 ~~eligibility and enrollment to federal guidance and regulations. The Agency~~  
8 ~~may use the emergency rules process set forth in 3 V.S.A. § 844 but only in the~~  
9 ~~event that new State or federal law or guidance requires Vermont to adopt or~~  
10 ~~amend its rules in a time frame that cannot be accomplished under the~~  
11 ~~traditional rulemaking process. An emergency rule adopted under these~~  
12 ~~exigent circumstances shall be deemed to meet the standard for the adoption of~~  
13 ~~emergency rules under 3 V.S.A. § 844(a).~~

14                   \* \* \* Exchange Plan Premium Processing \* \* \*

15       Sec. 3. EXCHANGE PLAN PREMIUM PROCESSING; PURPOSE

16       The purpose of Sec. 4 of this act, which amends 33 V.S.A. § 1005, is to  
17 transfer the Exchange plan premium processing functions from the Vermont  
18 Health Benefit Exchange to the insurance carriers as contemplated by 2018  
19 (Sp. Sess.) Acts and Resolves No. 11, Sec. C.102(a)(3).

1 ~~Sec. 4, 23 V.S.A., § 1805 is amended to read:~~

2 § 1805. DUTIES AND RESPONSIBILITIES

3 The Vermont Health Benefit Exchange shall have the following duties and  
4 responsibilities consistent with the Affordable Care Act:

5 \* \* \*

6 ~~(C) collecting premium payments made for qualified health benefit~~  
7 ~~plans from employers and individuals on a pretax basis, including collecting~~  
8 ~~premium payments from multiple employers of one individual for a single~~  
9 ~~plan covering that individual; and~~

10 ~~(D)(C)~~ creating a simplified and uniform system for the  
11 administration of health benefits.

12 \* \* \*

13 (6) Determining enrollee ~~premiums and~~ subsidies as required by the  
14 Secretary of the U.S. Department of the Treasury or of the U.S. Department of  
15 Health and Human Services and informing consumers of eligibility for  
16 ~~premiums and~~ subsidies, including by providing an electronic calculator to  
17 determine the actual cost of coverage after application of any premium tax  
18 credit under Section 36B of the Internal Revenue Code of 1986 and any cost-  
19 ~~sharing reduction under Section 1402 of the Affordable Care Act.~~

~~\*\*\* Medicaid Coverage for Adult Dental Services \*\*\*~~

Sec. 5. 33 V.S.A. § 1992 is amended to read:

§ 1992. MEDICAID COVERAGE FOR ADULT DENTAL SERVICES

(a) Vermont Medicaid shall provide coverage for medically necessary dental services provided by a dentist, dental therapist, or dental hygienist working within the scope of the provider's license as follows:

(1) ~~Up to two visits per calendar year for preventive~~ Preventive services, including prophylaxis and fluoride treatment, with no co-payment.

These services shall not be counted toward the annual maximum benefit amount set forth in subdivision (2) of this subsection.

\* \*

~~\*\*\* Vermont Prescription Monitoring System; Access \*\*\*~~

Sec. 6. 18 V.S.A. 4284(b)(1) is amended to read:

(b)(1) The Department shall provide only the following persons with access to query the VPMS:

\* \* \*

(C) ~~the Medical Director of~~ and Director of Pharmacy Services for the Department of Vermont Health Access, and a designee of each Director who reports directly to that Director, for the purposes of Medicaid quality assurance, utilization, and federal monitoring requirements with respect to

1 ~~Medicaid recipients for whom a Medicaid claim for a Schedule II, III, or IV~~

2 ~~controlled substance has been submitted;~~

3 \* \* \*

4 \* \* \* Prescription Drug Program Reporting \* \* \*

5 Sec. 7. 33 V.S.A. § 2001 is amended to read:

6 § 2001. LEGISLATIVE OVERSIGHT

7 ~~(a) In connection with the Pharmacy Best Practices and Cost Control~~  
8 ~~Program, the Commissioner of Vermont Health Access shall report for review~~  
9 ~~by the House Committees on Appropriations, on Health Care, and on Human~~  
10 ~~Services and the Senate Committee on Appropriations and on Health and~~  
11 ~~Welfare prior to any modifications:~~

12 ~~(1) the compilation that constitutes the preferred drug list or list of drugs~~  
13 ~~subject to prior authorization or any other utilization review procedures;~~

14 ~~(2) any utilization review procedures, including any prior authorization~~  
15 ~~procedures; and~~

16 ~~(3) the procedures by which drugs will be identified as preferred on the~~  
17 ~~preferred drug list, and the procedures by which drugs will be selected for~~  
18 ~~prior authorization or any other utilization review procedure.~~

19 ~~(b) The Committees shall closely monitor implementation of the preferred~~  
20 ~~drug list and utilization review procedures to ensure that the consumer~~

21 ~~protection standards enacted pursuant to section 1999 of this title are not~~

1 ~~diminished as a result of implementing the preferred drug list and the~~  
2 ~~utilization review procedures, including any unnecessary delay in access to~~  
3 ~~appropriate medications. The Committees shall ensure that all affected~~  
4 ~~interests, including consumers, health care providers, pharmacists, and others~~  
5 ~~with pharmaceutical expertise have an opportunity to comment on the~~  
6 ~~preferred drug list and procedures reviewed under this subsection.~~

7 ~~(e) The Notwithstanding the provisions of 2 V.S.A. § 20(d), the~~  
8 ~~Commissioner of Vermont Health Access shall report annually on or before~~  
9 ~~October 30 to the House Committees on Appropriations, on Health Care, and~~  
10 ~~on Human Services and the Senate Committees on Appropriations and on~~  
11 ~~Health and Welfare concerning the Pharmacy Best Practices and Cost Control~~  
12 ~~Program and the operation of Vermont's pharmaceutical assistance programs~~  
13 ~~for the most recent State fiscal year. Topics covered in the report shall~~  
14 ~~include:~~

- 15 ~~(1) issues related to drug cost and utilization;~~  
16 ~~(2) the effect of national trends on the pharmacy program;~~  
17 ~~(3) comparisons to other states;~~  
18 ~~(4) the Department's administration of Vermont's pharmaceutical~~  
19 ~~assistance programs;~~  
20 ~~(5) the Department's use of prior authorization requirements for~~  
21 ~~prescription drugs, and~~

1 ~~(c) decisions made by the Department's Drug Utilization Review Board~~  
2 in relation to both drug utilization review efforts and the placement of drugs  
3 on the Department's preferred drug list.

4 ~~(d) [Repealed.]~~

5 ~~(e)(b)(1) [Repealed.]~~

6 ~~(2) The Commissioner shall not enter into a contract with a pharmacy~~  
7 ~~benefit manager unless the pharmacy benefit manager has agreed to disclose to~~  
8 ~~the Commissioner the terms and the financial impact on Vermont and on~~  
9 ~~Vermont beneficiaries of:~~

10 \* \* \*

11 ~~(3)(2) The Commissioner shall not enter into a contract with a pharmacy~~  
12 ~~benefit manager who has entered into an agreement or engaged in a practice~~  
13 ~~described in subdivision (2)(1) of this subsection, unless the Commissioner~~  
14 ~~determines that the agreement or practice furthers the financial interests of~~  
15 ~~Vermont and does not adversely affect the medical interests of Vermont~~  
16 ~~beneficiaries.~~

17 Sec. 8. 33 V.S.A. § 2081 is amended to read:

18 § 2081. ~~RULES AND LEGISLATIVE OVERSIGHT~~ RULEMAKING

19 (a) The Agency of Human Services shall adopt rules necessary to  
20 implement and administer the provisions of this subchapter, including  
21 ~~standards and schedules establishing coverage and exclusion of~~



1 ~~pharmaceuticals and maximum quantities of pharmaceuticals to be dispensed,~~  
2 and to comply with the requirements of the Medicare Modernization Act. The  
3 Agency of Human Services shall submit the proposed rule to the Health Care  
4 Oversight Committee. The Health Care Oversight Committee shall review and  
5 advise on the Agency rules and policies developed under this subsection and  
6 shall submit for consideration any recommendations to the joint Legislative  
7 Committee on Administrative Rules.

8 (b) ~~DVHA shall report on the status of the pharmaceutical assistance~~  
9 ~~programs established by this subchapter to the Health Care Oversight~~  
10 ~~Committee.~~

11 \* \* \* Effective Dates \* \* \*

12 Sec. 9. EFFECTIVE DATES

13 (a) Secs. 3 (Exchange plan premium processing; purpose) and 4 (33 V.S.A.  
14 § 1805) shall take effect on October 1, 2021.

15 ~~(b) The remaining sections shall take effect on passage.~~

*Sec. 1. 33 V.S.A. § 1992 is amended to read:*

*§ 1992. MEDICAID COVERAGE FOR ADULT DENTAL SERVICES*

*(a) Vermont Medicaid shall provide coverage for medically necessary dental services provided by a dentist, dental therapist, or dental hygienist working within the scope of the provider's license as follows:*

*(1) ~~Up to two visits per calendar year for preventive~~ Preventive services, including prophylaxis and fluoride treatment, with no co-payment. These services shall not be counted toward the annual maximum benefit amount set forth in subdivision (2) of this subsection.*

*\* \* \**

*Sec. 2. 33 V.S.A. § 2001 is amended to read:*

*§ 2001. LEGISLATIVE OVERSIGHT*

*(a) ~~In connection with the Pharmacy Best Practices and Cost Control Program, the Commissioner of Vermont Health Access shall report for review by the House Committees on Appropriations, on Health Care, and on Human Services and the Senate Committees on Appropriations and on Health and Welfare prior to any modifications:~~*

*(1) ~~the compilation that constitutes the preferred drug list or list of drugs subject to prior authorization or any other utilization review procedures;~~*

*(2) ~~any utilization review procedures, including any prior authorization procedures; and~~*

~~(3) the procedures by which drugs will be identified as preferred on the preferred drug list, and the procedures by which drugs will be selected for prior authorization or any other utilization review procedure.~~

~~(b) The Committees shall closely monitor implementation of the preferred drug list and utilization review procedures to ensure that the consumer protection standards enacted pursuant to section 1999 of this title are not diminished as a result of implementing the preferred drug list and the utilization review procedures, including any unnecessary delay in access to appropriate medications. The Committees shall ensure that all affected interests, including consumers, health care providers, pharmacists, and others with pharmaceutical expertise have an opportunity to comment on the preferred drug list and procedures reviewed under this subsection.~~

~~(e) The Notwithstanding the provisions of 2 V.S.A. § 20(d), the Commissioner of Vermont Health Access shall report annually on or before October 30 to the House Committees on Appropriations, on Health Care, and on Human Services and the Senate Committees on Appropriations and on Health and Welfare concerning the Pharmacy Best Practices and Cost Control Program and the operation of Vermont's pharmaceutical assistance programs for the most recent State fiscal year. Topics covered in the report shall include:~~

~~(1) issues related to drug cost and utilization;~~

*(2) the effect of national trends on the pharmacy ~~program~~ programs;*

*(3) comparisons to other states;*

*(4) the Department's administration of Vermont's pharmaceutical assistance programs;*

*(5) the Department's use of prior authorization requirements for prescription drugs; and*

*(6) decisions made by the Department's Drug Utilization Review Board in relation to both drug utilization review efforts and the placement of drugs on the Department's preferred drug list.*

*~~(d) [Repealed.]~~*

*~~(e)(b)(1) [Repealed.]~~*

*~~(2)~~ The Commissioner shall not enter into a contract with a pharmacy benefit manager unless the pharmacy benefit manager has agreed to disclose to the Commissioner the terms and the financial impact on Vermont and on Vermont beneficiaries of:*

*\* \* \**

*~~(3)~~(2) The Commissioner shall not enter into a contract with a pharmacy benefit manager who has entered into an agreement or engaged in a practice described in subdivision ~~(2)~~(1) of this subsection, unless the Commissioner determines that the agreement or practice furthers the financial*

*interests of Vermont and does not adversely affect the medical interests of Vermont beneficiaries.*

*Sec. 3. 33 V.S.A. § 2081 is amended to read:*

*§ 2081. ~~RULES AND LEGISLATIVE OVERSIGHT~~ RULEMAKING*

*(a) The Agency of Human Services shall adopt rules necessary to implement and administer the provisions of this subchapter, including standards and schedules establishing coverage and exclusion of pharmaceuticals and maximum quantities of pharmaceuticals to be dispensed, and to comply with the requirements of the Medicare Modernization Act. ~~The Agency of Human Services shall submit the proposed rule to the Health Care Oversight Committee. The Health Care Oversight Committee shall review and advise on the Agency rules and policies developed under this subsection and shall submit for consideration any recommendations to the joint Legislative Committee on Administrative Rules.~~*

*(b) ~~DVHA shall report on the status of the pharmaceutical assistance programs established by this subchapter to the Health Care Oversight Committee.~~*

~~Sec. 4. SEPARATE INDIVIDUAL AND SMALL GROUP HEALTH~~

~~INSURANCE MARKETS FOR PLAN YEAR 2023 IF FEDERAL  
SUBSIDIES EXTENDED~~

~~(a) Purpose. The purpose of this section is to allow for separate individual and small group health insurance markets for plan year 2023 in the event that Congress extends increased opportunities for federal advanced premium tax credits to include plan year 2023 and that extension is enacted on or before September 1, 2022.~~

~~(b) Definitions. As used in this section, "health benefit plan," "registered carrier," and "small employer" have the same meanings as in 33 V.S.A. § 1811.~~

~~(c) Separate plans and community rating. Notwithstanding any provision of 33 V.S.A. § 1811 to the contrary, if the Department of Vermont Health Access, after consultation with interested stakeholders, determines on or before September 1, 2022 that Congress has extended the increased opportunities for federal premium assistance originally made available through the American Rescue Plan Act of 2021, Pub. L. No. 117-2 to eligible households purchasing qualified health benefit plans in the individual market to include plan year 2023, or has made substantially similar opportunities available, then for plan year 2023, a registered carrier shall.~~

~~(1) offer separate health benefit plans to individuals and families in the individual market and to small employers in the small group market;~~

~~(2) apply community rating in accordance with 33 V.S.A. § 1811(f) to determine the premiums for the carrier's plan year 2023 individual market plans separately from the premiums for its small group market plans; and~~

~~(3) file premium rates with the Green Mountain Care Board pursuant to 8 V.S.A. § 4062 separately for the carrier's individual market and small group market plans.~~

**Sec. 54. EFFECTIVE DATE**

This act shall take effect on passage.