

Administrative Procedures – Final Proposed Rule Filing

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 requiring a signature shall be original signatures of the appropriate adopting authority or authorized person, and all filings are to 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!

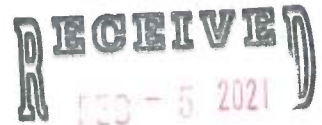
Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Non-Emergency Medical Transportation

/s/ Michael K. Smith , on 1/27/2021
(signature) (date)

Printed Name and Title:
Michael K. Smith, Secretary, Agency of Human Services

RECEIVED BY: _____



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

Final Proposed Coversheet

1. TITLE OF RULE FILING:

Non-Emergency Medical Transportation

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

20P-023

3. ADOPTING AGENCY:

Agency of Human Services

4. PRIMARY CONTACT PERSON:

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

Name: Ashley Berliner

Agency: Agency of Human Services

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

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

E-Mail: AHS.MedicaidPolicy@vermont.gov

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

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

5. SECONDARY CONTACT PERSON:

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

Name: Danielle Fuoco

Agency: Agency of Human Services

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

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

E-Mail: danielle.fuoco@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

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

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

Final Proposed Coversheet

(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:

AHS's authority to adopt rules as identified above includes by necessity authority to amend those rules to ensure continued alignment with federal and state guidance and law. The statutes authorize AHS as the adopting authority for administrative procedures and afford rulemaking authority for the administration of Vermont's medical assistance programs under Title XIX (Medicaid) of the Social Security Act.

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

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

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

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

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

14. CONCISE SUMMARY (150 WORDS OR LESS):

This rule sets forth the criteria for Medicaid coverage of non-emergency medical transportation services under Vermont's Medicaid program. It revises and will replace current Medicaid covered services rule 7408 Transportation as part of the sequential adoption of Health Care Administrative Rules designed to improve public accessibility and comprehension of the numerous rules concerning the operation of Vermont's Medicaid program.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

Final Proposed Coversheet

The rule is necessary to define coverage for non-emergency medical transportation services. This amendment aligns with federal and state guidance and law, improves clarity, and makes technical corrections. Revisions include: clarifying that this rule does not include emergency transportation, clarifying limitations on covered services, and establishing definitions.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

The rule is required to implement state and federal health care guidance and laws. Additionally, the rule is within the authority of the Secretary, is within the expertise of AHS, and is based on relevant factors including consideration of how the rule affects the people and entities listed below.

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

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

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

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

19. A HEARING WAS HELD.

20. HEARING INFORMATION

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

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

Date: 1/6/2021

Time: 12:00 PM

Street Address: Virtual Hearing - Microsoft Teams Meeting

Final Proposed Coversheet

+1 802-552-8456

Conference ID: 634 423 049#

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

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

1/13/2021

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

Medicaid

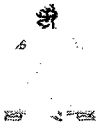
Health Care Administrative Rules

HCAR

Transportation

Non-Emergency Medical Transportation

NEMT


State of Vermont
Agency of Human Services
280 State Drive
Waterbury, VT 05671-1000
www.humanservices.vermont.gov

Michael K. Smith, Secretary
[phone] 802-241-0440
[fax] 802-241-0450

MEMORANDUM

To: Jim Condos, Secretary of State, Vermont Secretary of State Office
Sen. Mark A. MacDonald, Chair, Legislative Committee on Administrative Rules (LCAR)

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

Cc: Michael K. Smith, Secretary, Agency of Human Services
Charlene Dindo, Committee Assistant, Legislative Committee on Administrative Rules
Louise Corliss, Administrative Assistant, Secretary of State's Office

Date: February 5, 2021

Re: Agency of Human Services Final Proposed Rule Filing

Enclosed are the final proposed rule filings for the following Health Care Administrative Rules:

Amended:

- 20P023/4.225 Non-Emergency Medical Transportation
- 20P024/4.226 Ambulance Services

Public comments were not received on these amended rules during the public comment period. The rules have not been amended since they were filed as proposed rules.

The description of the amendments to these Health Care Administrative Rules are enclosed with each rule filing. The annotated and non-annotated final proposed rules are also posted on the Agency of Human Services' website: <https://humanservices.vermont.gov/rules-policies/health-care-rules/health-care-administrative-rules-hcar/proposed-rules>

If you have any questions regarding these rules, please contact Ashley Berliner, Director of Health Care Policy and Planning, at 802-578-9305.

Administrative Procedures – 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.

1. TITLE OF RULE FILING:

Non-Emergency Medical Transportation

2. ADOPTING AGENCY:

Agency of Human Services

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 as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

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

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

Renumbering and Restructuring of Vermont Rules,
including 7408 Transportation, SOS Rule Log #08-040
October 1, 2008

INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: November 9, 2020, via Microsoft Teams
Members Present: Chair Kristin Clouser, Dirk Anderson, Ashley Berliner, Diane Bothfeld, Jennifer Mojo, John Kessler, Matt Langham, Steve Knudson and Clare O'Shaughnessy
Minutes By: Melissa Mazza-Paquette

- 2:00 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the September 14, 2020 meeting.
- The following emergency rules were supported by ICAR Chair Clouser:
 - On 9/21/20: 'Hospital Licensing Rule' by the Agency of Human Services, Department of Health
 - On 9/22/20: 'Relaxation of Credentialing Verification Practices' by the Department of Financial Regulation
 - On 9/23/20: 'Emergency Administrative Rules for Notaries Public and Remote Notarization' by the Secretary of State, Office of Professional Regulation
 - On 9/30/20: 'Rule on Rulemaking' by the Office of the Secretary of State
 - On 10/16/20: 'PUC Emergency Rule 2.500 COVID-19 Emergency Procedures' by the Public Utility Commission
 - On 10/16/20: 'PUC Emergency Rule 2.600 COVID-19 Emergency Disconnection Rule' by the Public Utility Commission
 - On 10/23/20: 'Access to Health Care Services During the COVID-19' by the Department of Financial Regulation
- No additions deletions to agenda. Agenda approved as drafted.
- No public comments made.
- Presentation of Proposed Rules on pages 2-3 to follow.
 1. Non-Emergency Medical Transportation, Agency of Human Services, page 2
 2. Ambulance Rules, Agency of Human Services, page 3
- Next scheduled meeting is December 14, 2020 at 2:00 p.m.
- 2:42 p.m. meeting adjourned.

**Proposed Rule: Non-Emergency Medical Transportation, Agency of Human Services
Presented by Danielle Fuoco**

Motion made to accept the rule by John Kessler, seconded by Diane Bothfeld, and passed unanimously except for Ashley Berliner who abstained, with the following recommendations:

1. Public Input, page 1, #4: Move the last sentence of the first paragraph to the last sentence of the third paragraph.
2. Public Input, page 1, #4: Define 'VLA' in the third paragraph instead of 4th.



Administrative Procedures – 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.

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.

1. TITLE OF RULE FILING:

Non-Emergency Medical Transportation

2. ADOPTING AGENCY:

Agency of Human Services

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:

Potentially affected by the adoption of this rule:
Medicaid beneficiaries, Agency of Human Services including its Departments; Hospitals, Health law, policy, and related advocacy and community-based organizations and groups including the Office of the Health Care Advocate; transportation brokers, and health care providers.

Economic Impact Analysis

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

4. IMPACT ON SCHOOLS:

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

No impact

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

Not applicable

6. IMPACT ON SMALL BUSINESSES:

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

No impact

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

Not applicable

8. COMPARISON:

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

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

9. SUFFICIENCY: *EXPLAIN THE SUFFICIENCY OF THIS ECONOMIC IMPACT ANALYSIS.*

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

Administrative Procedures – 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.

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

1. TITLE OF RULE FILING:

Non-Emergency Medical Transportation

2. ADOPTING AGENCY:

Agency of Human Services

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

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

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

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

7. CLIMATE: *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*
No impact

Environmental Impact Analysis

8. OTHER: *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*
No impact

9. SUFFICIENCY: *EXPLAIN THE SUFFICIENCY OF THIS ENVIRONMENTAL IMPACT ANALYSIS.*
This rule has no impact on the environment.

Administrative Procedures – Public Input

Instructions:

In completing the public input statement, an agency describes the strategy prescribed by ICAR to maximize public input, what it did do, or will do to comply with that plan to maximize the involvement of the public in the development of the rule.

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

1. TITLE OF RULE FILING:

Non-Emergency Medical Transportation

2. ADOPTING AGENCY:

Agency of Human Services

3. PLEASE DESCRIBE THE STRATEGY PRESCRIBED BY ICAR TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

The ICAR hearing was held on November 9, 2020. ICAR prescribed that AHS maximize public involvement by completing the public rulemaking process, including holding a public hearing and considering public comments that are received.

4. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

This rule was filed in 2019 with the Secretary of State and a public hearing was held on 12/11/2019. The rulemaking process was not completed due to circumstances surrounding the COVID-19 public health emergency.

AHS notified the Medicaid and Exchange Advisory Board (MEAB) of this rulemaking on August 14, 2019 including the estimated timeframe for filing and the proposed amendments to the rule. No comments were received.

AHS also shared the proposed rule with Vermont Legal Aid (VLA) on 8/14/2019. AHS took comments from VLA and considered those comments in drafting this proposed rule. This rule has not changed since it was filed with the Secretary of State in 2019.

Public Input

AHS responded on September 11, 2020 to comments received from VLA during the public comment period in December 2019.

The proposed rule was posted on the AHS website for public comment, and another public hearing was held on January 6, 2021. The public comment period closed on January 13, 2021 - no comments were received.

When a rule is filed with the Office of the Secretary of State, AHS provides notice and access to the rule through the Global Commitment Register (GCR). The GCR provides notification of policy changes and clarifications of existing Medicaid policy, including rulemaking, under Vermont's 1115 Global Commitment to Health waiver. Anyone can subscribe to the GCR. Proposed, final proposed, and adopted rules, including all public comments and responses to rulemaking, are posted to the Global Commitment Register. Subscribers receive email notification of rule filings including hyperlinks to posted documents and an explanation of how to provide comment and be involved in the rulemaking.

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

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

Vermont Legal Aid;

Medicaid and Exchange Advisory Board;

Vermont Medical Society;

Bi-State Primary Care;

Vermont Public Transit Authority;

Vermont Association of Hospitals & Health Systems.

Non-Emergency Medical Transportation74084.225 Non-Emergency Medical Transportation (10/01/1986XX/XX/2021, GCR 20-09786-16F)4.225.1 DefinitionsThe following definitions shall apply for use in Rule 4.225:

- (a) “Broker” means an entity that, pursuant to a contract with Vermont Medicaid, procures and manages non-emergency transportation for eligible Medicaid beneficiaries.
- (b) “Related travel expenses” means the cost of meals and lodging en route to and from medical care at per diem rates established by Vermont Medicaid.

4.225.2 Covered Services

- (a) Transportation to and from necessary, non-emergency medical services is covered and available to eligible Medicaid recipients beneficiaries on a statewide basis. Transportation includes expenses for non-emergency medical transportation and other related travel expenses determined to be necessary by Vermont Medicaid to secure medically necessary services.
- (b) Medicaid will cover transportation and related travel expenses for one adult attendant while the need exists if the beneficiary:-
- (1) Is a minor under 18 years of age, or
 - (2) Has documented medical need from their treating provider for an attendant to accompany them to and from medical care.
- ~~(b)~~(c) Ambulance services, including for non-emergency care, are described in Rule 4.226 Ambulance Services.

4.225.3 Qualified ProvidersOnly transportation providers subcontracted with the Broker and enrolled in Vermont Medicaid are eligible to receive Medicaid payment to provide transportation under this rule.4.225.4 Conditions for CoverageThe following limitations on coverage shall apply:

- ~~(a)~~ Prior authorization is required. (Exceptions may be granted in a case of a medical emergency.)
- ~~(b)~~(a) Transportation is not otherwise available to the Medicaid recipient beneficiary.
- ~~(e)~~(b) Transportation is to and from necessary medically necessary services.
- ~~(d)~~(c) The medical service is generally available to and used by other members of the community or locality in which the recipient is located. Transportation is to a provider located within a 30-mile radius of the beneficiary’s home. If there is no qualified provider within this 30-mile radius, Vermont Medicaid will transport to the nearest available qualified provider. A recipient’s freedom of access to health care does not require Medicaid to cover transportation at unusual or exceptional cost in order to meet a recipient’s personal choice of provider.
- ~~(e)~~(d) Payment is made for the least expensive means mode of transportation available and suitable

appropriate to meet the medical needs of the recipientbeneficiary.

~~(f) Reimbursement for the service is limited to enrolled transportation providers.~~

~~(g) Reimbursement is subject to utilization control and review in accordance with the requirements of Title XIX.~~

~~(h) Any Medicaid eligible recipient who believes that his or her request for transportation has been improperly denied may request a fair hearing. For an explanation, see the "Fair Hearing Rules" listing in the Table of Contents.~~

4.225.5 Prior Authorization Requirements

Prior authorization is required for coverage of transportation.

4.225.6 Non-Covered Services

Transportation to any activity, program, or service that is not payable by Vermont Medicaid or is not directly provided to a Medicaid beneficiary by a Medicaid-enrolled provider is not covered.

Clean
Text

Non-Emergency Medical Transportation

4.225 Non-Emergency Medical Transportation (XX/XX/2021, GCR 20-097)4.225.1 Definitions

The following definitions shall apply for use in Rule 4.225:

- (a) **“Broker”** means an entity that, pursuant to a contract with Vermont Medicaid, procures and manages non-emergency transportation for eligible Medicaid beneficiaries.
- (b) **“Related travel expenses”** means the cost of meals and lodging en route to and from medical care at per diem rates established by Vermont Medicaid.

4.225.2 Covered Services

- (a) Transportation to and from necessary, non-emergency medical services is covered and available to eligible Medicaid beneficiaries on a statewide basis. Transportation includes expenses for non-emergency medical transportation and other related travel expenses determined to be necessary by Vermont Medicaid to secure medically necessary services.
- (b) Medicaid will cover transportation and related travel expenses for one adult attendant while the need exists if the beneficiary:
 - (1) Is a minor under 18 years of age, or
 - (2) Has documented medical need from their treating provider for an attendant to accompany them to and from medical care.
- (c) Ambulance services, including for non-emergency care, are described in Rule 4.226 Ambulance Services.

4.225.3 Qualified Providers

Only transportation providers subcontracted with the Broker and enrolled in Vermont Medicaid are eligible to receive Medicaid payment to provide transportation under this rule.

4.225.4 Conditions for Coverage

The following limitations on coverage shall apply:

- (a) Transportation is not otherwise available to the Medicaid beneficiary.
- (b) Transportation is to and from medically necessary services.
- (c) Transportation is to a provider located within a 30-mile radius of the beneficiary’s home. If there is no qualified provider within this 30-mile radius, Vermont Medicaid will transport to the nearest available qualified provider.
- (d) Payment is made for the least expensive mode of transportation available and appropriate to meet the medical needs of the beneficiary.

4.225.5 Prior Authorization Requirements

Prior authorization is required for coverage of transportation.

4.225.6 Non-Covered Services

Transportation to any activity, program, or service that is not payable by Vermont Medicaid or is not directly provided to a Medicaid beneficiary by a Medicaid-enrolled provider is not covered.

VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

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 **GENERAL ASSEMBLY**

The Vermont Statutes Online

Title 33 : Human Services

Chapter 019 : Medical Assistance

Subchapter 001 : Medicaid

(Cite as: 33 V.S.A. § 1901)

§ 1901. Administration of program

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

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

(3) [Repealed.]

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

(b) [Repealed.]

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

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

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

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

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

(e) [Repealed.]

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

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

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

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



Proposed Rules Postings

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Deadline For Public Comment

Deadline: Jan 13, 2021

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

Rule Details

Rule Number:	20P023
Title:	Non-Emergency Medical Transportation.
Type:	Standard
Status:	Final Proposed
Agency:	Agency of Human Services
Legal Authority:	3 V.S.A. § 801(b)(11); 33 V.S.A. § 1901(a)(1)
Summary:	This rule sets forth the criteria for Medicaid coverage of non-emergency medical transportation services under Vermont's Medicaid program. It revises and will replace current Medicaid covered services rule 7408 Transportation as part of the sequential adoption of Health Care Administrative Rules designed to improve public accessibility and

comprehension of the numerous rules concerning the operation of Vermont's Medicaid program.

Persons Affected: Medicaid beneficiaries, Agency of Human Services including its Departments; Hospitals, Health law, policy, and related advocacy and community-based organizations and groups including the Office of the Health Care Advocate; transportation brokers, and health care providers.

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

Posting date: Nov 25,2020

Hearing Information

Information for Hearing # 1

Hearing date: 01-06-2021 12:00 PM

Location: Virtual Hearing via Microsoft Teams ID: 634 423 049#

Address: Call in # +1 802-552-8456

City: n/a

State: VT

Zip: n/a

Hearing Notes: Virtual Hearing - Microsoft Teams Meeting ID: 634 423 049# Call in number: +1 802-552-8456

Contact Information

Information for Primary Contact

PRIMARY CONTACT PERSON - A PERSON WHO IS ABLE TO ANSWER QUESTIONS

Level: Primary

Name: Ashley Berliner

Agency: Agency of Human Services

Address: 280 State Drive, Center Building

City: Waterbury

State: VT

Zip: 05671

Telephone: 802-578-9305

Fax: 802-241-0450

Email: danielle.fuoco@vermont.gov

Website Address: <https://humanservices.vermont.gov/rules-policies/health-care-rules/health-c>

Information for Secondary Cont

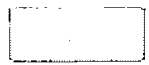
SECONDARY CONTACT PERSON - A SPECIFIC PERSON FROM WHOM COPI MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFF

Level: Secondary
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Keyword Information

Keywords:

- Medicaid
- Health Care Administrative Rules
- HCAR
- Transportation
- Non-Emergency Medical Transportation
- NEMT



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The Islander (islander@vermontislander.com)	Tel: 802-372-5600 FAX: 802-372-3025
Vermont Lawyer (hunter.press.vermont@gmail.com)	Attn: Will Hunter

FROM: Louise Corliss, APA Clerk

Date of Fax: November 23, 2020

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

December 3, 2020

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 Louise Corliss at 802-828-2863, or E-Mail louise.corliss@vermont.gov, Thanks.

PROPOSED STATE RULES

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).

Combined Newspaper Advertisement for AHS Administrative Rulemaking

The two rules below are being promulgated by the Agency of Human Services (AHS) which has requested the notices be combined to facilitate a savings for the agency. When contacting AHS about these rules, please note the title and rule number of the rule(s) you are interested in.

Amended:

Non-Emergency Medical Transportation: 20P023
Ambulance Services: 20P024

AGENCY: Agency of Human Services

CONCISE SUMMARY: The proposed rules above set forth the criteria for coverage and service delivery for the Medicaid program. These rules are part of the sequential adoption of Health Care Administrative Rules designed to improve public accessibility and comprehension of the rules under Vermont's Medicaid program. The amendments to each of the two rules align each rule with relevant federal and state law and guidance. The amendment to the Ambulance Services rule clarifies which providers may sign the physician certification statement and clarifies limitations in coverage. The amendment to the Non-Emergency Medical Transportation rule clarifies that the rule does not include emergency transportation, clarifies limitations on covered services, and establishes definitions.

FOR FURTHER INFORMATION CONTACT: Ashley Berliner Agency of Human Services 280 State Drive Waterbury, VT 05671-1000; Tel: 802-578-9305 Fax: 802-241-0450 E-mail: ashley.berliner@vermont.gov
URL: <https://humanservices.vermont.gov/rules-policies/health-care-rules>.
