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## STATE OF VERMONT

### Legislative Committee on Administrative Rules (LCAR)

**MEMO TO:** Representative William J. Lippert Jr., Chair, House Committee on Health Care  
Senator Virginia "Ginny" Lyons, Chair, Senate Committee on Health and Welfare

**FROM:** Legislative Committee on Administrative Rules

**DATE:** December 1, 2022

**SUBJECT:** Concerns Related to the Health Benefits Eligibility and Enrollment (HBEE) Rule,  
Eligibility Standards (Part 2)

The Legislative Committee on Administrative Rules (LCAR) reviewed and approved [Health Benefits Eligibility and Enrollment \(HBEE\) Rule, Eligibility Standards \(Part 2\)](#) at LCAR's November 17, 2022, meeting. The approved amendments include language allowing, but not requiring, the Agency of Human Services (AHS) to "designate a standardized assessment tool which AHS will use whenever it determines whether an individual requires an institutional level of care[,]" which is part of the eligibility criteria for qualifying for Disabled Children's Home Care (DCHC), also known as Katie Beckett Medicaid. *See* HBEE Rule, Eligibility Standards (Part 2) Sec. 8.05(k)(6)(i)(B).

Throughout the rulemaking process, AHS received comments from members of the public, including a joint comment from the Disability Law Project, Vermont Legal Aid, and the Office of the Health Care Advocate regarding the need for and the process involved in developing a standardized assessment tool for determining if an individual requires an institutional level of care for purposes of eligibility for DCHC (standardized assessment tool). *See* [Letter from M. Stinchcombe, R. Seelig, and B. Pine to Medicaid Policy Unit](#). Rachel Seelig, Director, Disability Law Project, Vermont Legal Aid, also testified to LCAR on the standardized assessment tool. *See* [Nov. 17, 2022, LCAR Meeting at 25:45–1:02:00](#) (also includes reply testimony from Ashley Berliner, Director of Healthcare Policy, Department of Vermont Health Access (DVHA), AHS, and related Committee discussion).

While AHS provided testimony on the process that has been taken thus far to develop the standardized assessment tool—review by cross-disciplinary clinicians—and plans for and commitment to future stakeholder engagement, one or more members of LCAR are concerned that:

1. HBEE Rule, Eligibility Standards (Part 2), expected to be effective January 1, 2023, will now include reference to the standardized assessment tool, which has not yet been made available, even in draft form, to members of the public; and

2. the process for AHS to eventually solicit stakeholder engagement as part of the development of the standardized assessment tool might not be sufficiently broad and might not properly address, on an ongoing basis, changes in the evolving standard of what is an institutional level of care.

These issues related to the standardized assessment tool are outside the jurisdiction of LCAR but within the jurisdiction of your committees. Accordingly, LCAR requests that the House Committee on Health Care and the Senate Committee on Health and Welfare review, during the 2023 legislative session, both AHS referencing assessment tools that do not yet exist in rule and the process that has been and will be used to develop and update the standardized assessment tool referenced in HBEE Rule, Eligibility Standards (Part 2) Sec. 8.05(k)(6)(i)(B).

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