

## 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:

### **Telehealth**

/s/ Todd W. Daloz

\_\_\_\_\_  
(signature)

, on 2/8/23

\_\_\_\_\_  
(date)

### Printed Name and Title:

Todd Daloz, Deputy Secretary, 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:

**Telehealth**

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

22P 031

3. ADOPTING AGENCY:

Agency of Human Services (AHS)

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: Ashley.berliner@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: Susan Coburn

Agency: Agency of Human Services

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

Telephone: (802) 989-4245 Fax: (802) 241-0450

E-Mail: Susan.Coburn@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:

AHS's authority to adopt rules is identified above. 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 and reimbursement for covered services delivered via telehealth under Vermont's Medicaid program. It amends current Medicaid Health Care Administrative Rule 3.101 Telehealth. Revisions include: adding audio-only as allowable under telehealth, updating the term telemonitoring to remote patient monitoring, and expanding remote patient monitoring diagnosis to include hypertension or diabetes.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

The rule is necessary to define the criteria and coverage for services delivered via telehealth. This amendment aligns with federal and state guidance and law, improves clarity, and makes technical corrections.

Revisions include: adding audio-only as allowable under telehealth, updating the term telemonitoring to remote patient monitoring, and expanding remote patient monitoring diagnosis to include hypertension or diabetes.

**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 Health Care Advocate; 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 in fiscal year 2022. The changes and amendments conform the rule 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: 12/14/2022

Time: 11:00 AM

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

OR

Virtual Hearing - Phone or Microsoft Teams call in (802)552-8456; Conference ID: 244318529#

Teams link made available through the Public Notice in the Global Commitment Register on the AHS website.

Zip Code: 05671

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):**

12/21/2022

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

Medicaid

Telehealth

Telemedicine

Store and Forward

Telemonitoring

Remote Patient Monitoring

Audio-only

Health Care Administrative Rules

HCAR



**State of Vermont**  
**Agency of Human Services**  
Office of the Secretary  
280 State Drive  
Waterbury, VT 05671-1000  
[www.humanservices.vermont.gov](http://www.humanservices.vermont.gov)

*Jenney Samuelson, Secretary*

[phone] 802-241-0440  
[fax] 802-241-0450

**MEMORANDUM**

**To:** Sarah Copeland Hanzas, Secretary of State, Vermont Secretary of State Office  
Representative Trevor Squirrell, Chair, Legislative Committee on Administrative Rules (LCAR)

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

**Cc:** Charlene Dindo, Committee Assistant, LCAR  
Monica Hutt, Assistant Director of Policy and Communications, Agency of Administration  
Jenney Samuelson, Secretary, Agency of Human Services

**Date:** February 16, 2023

**Re:** Health Care Administrative Rules

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Please find enclosed the final proposed rule filing from the Agency of Human Services for the following rules:

Amended:

- 22P031 Telehealth
- 22P032 Prosthetic and Orthotic Devices
- 22P033 Podiatry Services
- 22P034 Transplantation Services

A public hearing was held on December 14, 2022, and the public comment period ended December 21, 2022. No comments were received. No changes have been made since the filing of the proposed rules.

If you have any questions regarding these rules, please contact Susan Coburn, Health Care Policy Analyst, at 802-578-9412.

## 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:

**Telehealth**

2. ADOPTING AGENCY:

Agency of Human Services (AHS)

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 **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*):

SOS Rule Log #18-065 entitled: Telehealth, effective 1/7/2019



## INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

**Meeting Date/Location:** October 10, 2022, virtually via Microsoft Teams

**Members Present:** Chair Douglas Farnham, Brendan Atwood, Diane Bothfeld, Jared Adler, Jennifer Mojo, John Kessler, Diane Sherman, Michael Obuchowski and Donna Russo-Savage

**Minutes By:** Melissa Mazza-Paquette

- 2:01 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the [September 12, 2022](#) meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
- No public comments made.
- The following emergency rules were supported by ICAR Chair Farnham (*note the summaries may be found on the agenda*):
  - Transitional Housing Program Emergency Rules, Agency of Human Services, Department for Children and Families, on 09/22/22
  - The Board of Medical Practice Emergency Rule, Agency of Human Services, Department of Health, on 09/30/22
  - PUC Emergency Rule 2.500 COVID-19 Emergency Procedures, Public Utility Commission, on 09/30/22
- Presentation of Proposed Rules on pages 3-9 to follow.
  1. Licensing Regulations for Foster Homes in Vermont, Agency of Human Services, Department for Children and Family Services, page 3
  2. Telehealth, Agency of Human Services, page 4
  3. Prosthetic and Orthotic Devices, Agency of Human Services, page 5
  4. Podiatry Services, Agency of Human Services, page 6
  5. Transplantation Services, Agency of Human Services, page 7
  6. Vermont Commercial Building Energy Standards, Department of Public Service, page 8
  7. Vermont Residential Building Energy Standards Amendments, Department of Public Service, page 9
- No other business.
- Next scheduled meeting is November 14, 2022 at 2:00 p.m.
- 3:47 p.m. meeting adjourned.



**Proposed Rule:** Telehealth, Agency of Human Services  
**Presented By:** Hillary Hill

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

1. Be consistent throughout the rule with 'telehealth' whether it's capitalized or not.
2. Proposed Filing Coversheet, #8: As this summary is visible to the public, incorporate the changes, including the information from #9 of the Economic Impact Analysis.
3. Proposed Filing Coversheet, #15: Update the date.

DRAFT