

## 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:

**Independent External Review of Health Care Service Decisions**

/s/ Kevin Gaffney

, on 3/03/2023

(signature)

(date)

Printed Name and Title:

Kevin Gaffney, Commissioner of Financial Regulation

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:

**Independent External Review of Health Care Service Decisions**

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE  
22P 035

3. ADOPTING AGENCY:

Department of Financial Regulation

4. PRIMARY CONTACT PERSON:

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

Name: E. Sebastian Arduengo

Agency: Department of Financial Regulation

Mailing Address: 89 Main Street, Montpelier, VT 05620 -  
3101

Telephone: (802) 828-4846 Fax: (802) 828-5593

E-Mail: Sebastian.Arduengo@vermont.gov

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

<https://dfr.vermont.gov/view/regbul>

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: Emily Kisicki

Agency: Department of Financial Regulation

Mailing Address: 89 Main Street, Montpelier, VT 05620 -  
3101

Telephone: (802) 622-4305 Fax:

E-Mail: Emily.Kisicki@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?)* Yes

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

1 V.S.A. § 317(c) (28) .

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

Documents and records relating to independent external reviews filed under this rule may contain Protected Health Information (PHI) that is protected under the

Health Insurance Portability and Accountability Act of 1996 (HIPAA). The proposed rule revisions do not expand or contract this statutory 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).*

8 V.S.A. §§ 15, 4089a, & 4089f.

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

Under 8 V.S.A. § 4089f, the Department of Financial Regulation is required to adopt rules necessary to ensure that an insured person who has exhausted all applicable internal review procedures provided by a health benefit plan, defined as "a policy, contract, certificate or agreement entered into, offered or issued by a health insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services[,]" has the right to an independent external review of the plan's decision to deny, reduce or terminate health care coverage or to deny payment for a health care service.

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 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):

The Independent External Review of Health Care Services Decision Rule (hereafter, the "Rule") provides a process for individuals whose health insurance plan has denied, reduced or terminated their health insurance coverage or denied payment for a health care service, and who

have exhausted all applicable internal review procedures provided by their health benefit plan, to obtain an independent external review of the plan's decision.

In addition to technical corrections, the proposed revisions to the Rule expand the scope of external review to any adverse benefit determination involving whether a claim is eligible for surprise billing and cost-sharing protections under the federal No Surprises Act.

**15. EXPLANATION OF WHY THE RULE IS NECESSARY:**

Under 45 C.F.R. § 147.136(c), states that do not have a process for external review of No Surprises Act compliance matters must direct insured persons and insurers to a federally-administered process to meet the minimum standards for state external review. Because a state-administered process is faster and more accessible than the federal process, it is necessary to amend the Rule to allow for external review of No Surprises Act compliance matters.

**16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:**

The proposed revisions to the Rule are not arbitrary in that they are necessary to conform the Rule to regulations at 45 C.F.R. § 147.136(c) specifying that health benefit plans subject to an applicable state external review process must provide for external review of No Surprises Act compliance matters.

**17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES**

**AFFECTED BY THIS RULE:**

Health Insurers

Department of Financial Regulation

Health Insurance Consumers

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

The Department anticipates that the economic impact of the the proposed revisions to this Rule will be minimal. All Vermont-licensed health insurers already participate in the Department's external review

program, and the Independent Review Organizations contracted with the Department have the capability to provide external review of No Surprises Act compliance matters. Because the vast majority of providers in Vermont are in-network with Vermont-licensed health insurers it is rare for patients to receive surprise bills, and therefore, the Department does not anticipate many reviews being generated from No Surprises Act compliance.

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: 1/26/2023

Time: 09:00 AM

Street Address: 89 Main Street, Montpelier, VT

Zip Code: 05620 - 3101

The Department will be providing an call-in option for attendees through Microsoft Teams. Call-in information may be found below:

+1 802-828-7667; ID 729008073#

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):  
2/02/2023

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

No Surprises Act

Healthcare

Health Insurance

External Review

Health Benefit Plan

## 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:

**Independent External Review of Health Care Service Decisions**

2. ADOPTING AGENCY:

Department of Financial Regulation

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*):

Independent External Review of Health Care Service Decisions; April 13, 2011; SOS Log # 11P014



**State of Vermont**  
**Agency of Administration**  
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[phone] 802-828-3322  
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*Kristin L. Clouser, Secretary*

## INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

**Meeting Date/Location:** November 14, 2022, virtually via Microsoft Teams

**Members Present:** Chair Douglas Farnham, Brendan Atwood, Diane Bothfeld, Jared Adler, Jennifer Mojo, John Kessler, Diane Sherman, Donna Russo-Savage, Michael Obuchowski (left at 3:10 PM), Incoming Chair Sean Brown

**Minutes By:** Melissa Mazza-Paquette

- 2:00 p.m. meeting called to order, welcome and introductions.
  - Note: Agency of Administration Chief Operating Officer Sean Brown has been appointed to serve as chair of ICAR effective December 1, 2022.
- Review and approval of minutes from the [October 10, 2022](#) meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
- No public comments made.
- Presentation of Proposed Rules on pages 2-3 to follow.
  - Independent External Review of Health Care Service Decisions, Department of Financial Regulation
  - Rule 4.500 Safety of Hydroelectric Dams, Vermont Public Utility Commission
- Chair Farnham shared his gratitude for his involvement with ICAR as this was his last meeting, and thanked members for their service and the importance of the work of ICAR.
- Next scheduled meeting is December 12, 2022 at 2:00 p.m.
- 3:19 p.m. meeting adjourned.



**Proposed Rule: Independent External Review of Health Care Service Decisions, Department of Financial Regulation**

**Presented By:** Sebastian Arduengo

Motion made to accept the rule by Mike Obuchowski, seconded by John Kessler, and passed unanimously except for Diane Sherman who abstained, with the following recommendations:

1. Include Incorporation by Reference form to reference to reliability on other governing bodies, rules or regulations.
2. Use an appropriate consistent word throughout filing for 'insured'.
3. Proposed Filing Coversheet, #7: Reference 'health benefit plan' where defined.
4. Proposed Filing Coversheet, #9: Clarify to include insureds as well.
5. Proposed Filing Coversheet, #10: Clarify for consistency 'issuers'.
6. Proposed Filing Coversheet, #14 and Public Input Maximization Plan: Include virtual option/meeting(s) if applicable.
7. Proposed Filing Coversheet, #15: Complete once known.
8. Adopting Page, #4: Include title.
9. Economic Impact Analysis, #8: Use 'negligible' or 'de minimis' instead of 'minimal'.
10. Public Input Maximization Plan #3: Note that health care providers, etc. will continue to provide these types of updated information to their consumers/patients.
11. Proposed Rule: Change effective date to January 1, 2023 from 2022. Remove duplicates of 'IRO' and 'independent review organizations' in multiple places, such as in Section 5 (M) 1.