

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:

Inpatient Hospital Services

/s/ Todd W. Daloz

(signature)

, on 6/16/23

(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

280 State Drive - Center Building
Waterbury, VT 05671-1000



OFFICE OF THE SECRETARY
TEL: (802) 241-0440
FAX: (802) 241-0450

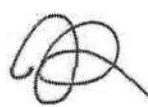
JENNEY SAMUELSON
SECRETARY

TODD W. DALOZ
DEPUTY SECRETARY

STATE OF VERMONT
AGENCY OF HUMAN SERVICES

MEMORANDUM

TO: Jim Condos, Secretary of State

FROM: Jenney Samuelson, Secretary, Agency of Human Services 

DATE: April 1, 2022

SUBJECT: Signatory Authority for Purposes of Authorizing Administrative Rules

I hereby designate Deputy Secretary of Human Services Todd W. Daloz as signatory to fulfill the duties of the Secretary of the Agency of Human Services as the adopting authority for administrative rules as required by Vermont's Administrative Procedure Act, 3 V.S.A. § 801 et seq.

Cc: Todd W. Daloz

1. TITLE OF RULE FILING:

Inpatient Hospital Services

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

22P040

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: Department of Vermont Health Access

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: Department of Vermont Health Access

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:

N/A

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

N/A

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. § 802(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 CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS 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 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 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 coverage of inpatient hospital services under Vermont's Medicaid program. It amends Medicaid Covered Services Rule 7201 - Inpatient Services - Medical and Psychiatric. Revisions include: new definitions informed by federal Medicaid law; clarifying language on the Vermont Medicaid provider network and prior authorization requirement for elective admissions; and removal of content that is described in other administrative rules, the Medicaid State Plan, and/or the Medicaid Provider Manuals.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

This rule is necessary to define the criteria for coverage for inpatient hospital services. This

amendment aligns with federal and state guidance and law, improves clarity, and makes technical corrections.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

This 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; and health care providers

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

This 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 2023. 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: 2/8/2023

Time: 02:00 PM

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, Phone Conference ID: 796 336 327#

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

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):

2/15/2023

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

Medicaid

Inpatient

Hospital

Inpatient Hospital Services

Health Care Administrative Rules

HCAR



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Agency of Human Services
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Jenney Samuelson, Secretary

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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: June 13, 2023

Re: Health Care Administrative Rules

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

Amended:

- 22P039 Health Care Administrative Rules Definitions
- 22P040 Inpatient Hospital Services
- 22P041 Outpatient Hospital Services

A public hearing for the proposed rules was held on February 8, 2023, and the public comment period ended February 15, 2023. Comments were received from the Vermont Association of Hospitals & Health Systems (VAHHS) on the Inpatient Hospital Services and Outpatient Hospital Services rules. No comments were received on the Definitions rule. No changes have been made to the Outpatient Hospital Services rule and the Definitions rule since the filing of the proposed rules.

A change has been made to the Inpatient Hospital Services rule since the proposed filing. This change was made in response to the comment received from VAHHS, and the agency's response to this comment is included in the filing package. For your convenience, the change made to the proposed filing is highlighted in grey in the annotated rule text.

The agency has added "or other qualified practitioner with admitting privileges" to the definition of "inpatient" in HCAR 4.200.1(a) as follows:

- (a) **Inpatient** means a Vermont Medicaid beneficiary who has been admitted to a medical institution as an inpatient on recommendation of a physician, naturopathic physician, ~~or dentist~~, or other qualified practitioner with admitting privileges and who –
- (1) Receives room, board, and professional services in the institution for a 24-hour period, or
 - (2) Is expected by the institution to receive room, board, and professional services in the institution for a 24-hour period or longer even though it later develops that the patient dies, is discharged, or is transferred to another facility and does not actually stay in the institution for 24 hours.

If you have any questions regarding these rules, please contact Dani Fuoco, Health Care Policy Analyst, at 802-585-4265.

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:

Inpatient Hospital Services

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 #12-025 entitled: Hospital Services [7201]
effective 07/26/2012



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Kristin L. Clouser, Secretary

INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: December 12, 2022, virtually via Microsoft Teams

Members Present: Chair Sean Brown, Brendan Atwood, Diane Bothfeld, Jared Adler, Jennifer Mojo, John Kessler, Diane Sherman, and Donna Russo-Savage

Members Absent: Michael Obuchowski

Minutes By: Melissa Mazza-Paquette

- 2:00 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the November 14, 2022 meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
- No public comments made.
- Presentation of Proposed Rules on pages 2-7 to follow.
 1. Health Care Administrative Rules Definitions, Agency of Human Services, page 2
 2. Inpatient Hospital Services, Agency of Human Services, page 3
 3. Outpatient Hospital Services, Agency of Human Services, page 4
 4. Department of Liquor and Lottery, Administrative Rules Update, Department of Liquor and Lottery, page 5
 5. Radiological Health Rule, Vermont Department of Health, page 6
 6. Antidegradation Implementation Rule, Agency of Natural Resources, page 7
- Other business: Committee discussion on Economic Impact Analysis and internal agency practices being codified into rule versus an external-like motivating practice (for example: If there's a federal rule that's on point or if the Legislature is moving an agency to adopt a rule because of some existing kind of procedures or policies that are already being followed because they're essentially being enforced by another body).
- Next scheduled meeting is Monday, January 9, 2023 at 2:00 p.m.
- 4:02 p.m. meeting adjourned.



Proposed Rule: Inpatient Hospital Services, Agency of Human Services
Presented By: Dani Fuoco

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

1. Adopting Page, #4: Include effective date.
2. Proposed Rule, 4.200.1 (b)(4): Change 'does' to 'do' if appropriate.
3. Proposed Rule, 4.200.4: Clarify who is required to seek authorization.

DRAFT

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. If no impacts are anticipated, please specify “No impact anticipated” in the field.

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:

Inpatient Hospital Services

2. ADOPTING AGENCY:

Agency of Human Services (AHS)

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:

There are no additional costs associated with this rule because the amendments reflect the 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:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

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 this 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.

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. If no impacts are anticipated, please specify “No impact anticipated” in the field.

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:

Inpatient Hospital Services

2. ADOPTING AGENCY:

Agency of Human Services (AHS)

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
8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*
No impact
9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*
This rule has no impact on the environment.

Public Input Maximization Plan

Instructions:

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

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

1. TITLE OF RULE FILING:

Inpatient Hospital Services

2. ADOPTING AGENCY:

Agency of Human Services (AHS)

3. PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE, LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

AHS shared the proposed rule with Vermont Legal Aid, Vermont Medical Society, Vermont Association of Hospitals and Health Systems, Vermont Care Partners, Bi-State Primary Care Association, and the VNAs of Vermont on 9/28/2022. No comments were received.

AHS notified the Medicaid and Exchange Advisory Committee (MEAC) on 10/12/2022 including the estimated timeframe for filing and the proposed amendments to the rule. No comments were received.

The proposed rule was posted on the AHS website for public comment, and a public hearing was held on 2/8/2023. No one attended the hearing. The public comment period closed on 2/15/2023. A comment was received from the Vermont Association of Hospitals and Health Systems (VAHHS). The comment received, responsiveness summary, and a list of technical changes are included with this filing.

Public Input

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 GCR. Subscribers receive email notifications of rule filings including hyperlinks to posted documents and an explanation of how to provide comment and be involved in the rulemaking.

4. 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;

Vermont Medical Society;

Vermont Association of Hospitals and Health Systems;

Vermont Care Partners;

Bi-State Primary Care Association; and

Medicaid and Exchange Advisory Committee.



State of Vermont
Agency of Human Services
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Jenney Samuelson, Secretary
Todd Daloz, Deputy Secretary

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

Date: June 8, 2023

Re: Response to Public Comments on proposed Health Care Administrative Rule (HCAR) Inpatient Hospital Services (4.200) and Outpatient Hospital Services (4.201).

One comment was received from Primmer Piper Eggleston & Cramer PC on behalf of the Vermont Association of Hospitals and Health Systems. No other comments were received. The comment can be found on the following pages.

State Response:

The Agency of Human Services appreciates the comment on the definition of “outpatient hospital services” in HCAR 4.201 and the definition of “inpatient” in HCAR 4.200. The proposed rules add definitions, including “inpatient” and “outpatient hospital services”, to provide clarity and to align with applicable federal Medicaid regulations.

Outpatient Hospital Services Definition (HCAR 4.201.1(b))

Rule 4.201 defines outpatient hospital services, in part, as ones “furnished to outpatients by or under the direction of a physician, naturopathic physician, or dentist.” The commenter states that the exclusive reference to physicians in the proposed definitions creates a risk for future disputes and confusion that could adversely affect qualified, nonphysician practitioners. The commenter suggests that the language in the proposed definitions could be harmonized with *Medicare* regulations. The commenter proposes to define “under the direction of a physician” as “the overall direction and control of outpatient hospital services.” The Medicare regulation example cited by the commenter refers to hospital outpatient therapeutic services being furnished under the “general supervision” of a physician, with general supervision meaning the procedure is furnished under the physician’s overall direction and control (42 CFR § 410.27(a)(1)).

In support of the recommended changes, the commenter also suggests that the applicable federal Medicaid regulations are dated (have not changed since the 1980s) and do not reflect changes in care delivery and the increased use and independence of nonphysician practitioners. In fact, the federal government did change the definition of “outpatient hospital services” for Medicaid in 2008 ([73 FR 66198](#)) but rescinded that final rule in its entirety in 2009 ([74 FR 31195](#)). In the explanation for the rescission of the 2008 final rule, the Centers for Medicare & Medicaid Services (CMS) listed many concerned public comments, including that the Medicare outpatient hospital definition is too restrictive to meet the needs of those served under the Medicaid program. To address the concerns, CMS reinstated the regulatory definition of “outpatient hospital services” at 42 CFR § 440.20 that existed before the

2008 final rule and that is still in place today. Accordingly, CMS reviewed this rule in 2009 and chose to reinstate it without change; including its reference to physicians.

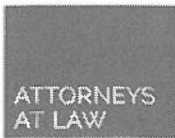
While there may be similarities in regulations, the federal Medicare regulations do not apply to the Medicaid program. The commenter recommends that the rule be revised to mean “overall direction and control...” however, the Medicare regulation cited by the commenter for hospital outpatient therapeutic services goes on to define several levels of supervision – general, direct, and personal – with general supervision requiring the least amount of oversight by the physician. The agency believes that the language in the proposed definition of “outpatient hospital services” at HCAR 4.202.1(b) aligns with Medicaid regulation, does not prohibit nonphysician practitioners from furnishing these services (if furnished under the supervision of a physician), and allows for multiple levels of supervision depending upon what is required and appropriate for the service/procedure.

Inpatient Definition (HCAR 4.200.1(a))

The comment also proposes modification to the definition of “inpatient” in the proposed rule at 4.200.1(a) to clarify the roles of physicians and other qualified practitioners. While the language as proposed is currently accurate and aligned with federal Medicaid regulation, the agency agrees that a modification to this definition would mitigate risk of future disputes should hospitals bestow admitting privileges on nonphysician practitioners. Hospital admitting privileges for inpatient care differ from the scope of outpatient hospital services that may be furnished by or under the direction of a physician. Admitting privileges are formal agreements between a provider and a specific hospital, and thus may vary from hospital to hospital. It is not the intention of this rule to limit the scope of qualified practitioners for whom a hospital may choose to grant admitting privileges.

Therefore, the agency has added “or other qualified practitioner with admitting privileges” to the definition of “inpatient” in HCAR 4.200.1(a) as follows:

- (a) **Inpatient** means a Vermont Medicaid beneficiary who has been admitted to a medical institution as an inpatient on recommendation of a physician, naturopathic physician, ~~or dentist,~~ or other qualified practitioner with admitting privileges and who –
- (1) Receives room, board, and professional services in the institution for a 24-hour period,
or
 - (2) Is expected by the institution to receive room, board, and professional services in the institution for a 24-hour period or longer even though it later develops that the patient dies, is discharged, or is transferred to another facility and does not actually stay in the institution for 24 hours.



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February 14, 2023

Ashley Berliner
Director of Healthcare Policy and Planning
Agency of Human Services
Waterbury State Office Complex, 280 State Drive
Waterbury, VT 05671-1000
ahs.medicaidpolicy@vermont.gov

Via: email

Re: Comments on Proposed Inpatient and Outpatient Hospital Rules

The following comments are being provided on behalf of the Vermont Association of Hospitals and Health Systems in relation to the proposed Health Care Administrative Rules for inpatient and outpatient hospital services. We recognize that the proposed rules replicate, and are intended to comply with the applicable federal Medicaid rules. However, the federal rules have not changed since 1982, and 1987, and do not reflect the changes in care delivery and the increased prevalence, and independence of nonphysician practitioners who are essential to ensuring access to high-value care.

This comment requests that DVHA including additional detail in the rules regarding the complimentary roles of physicians, and nonphysician practitioners to reflect current practices, and avoid potential confusion that could adversely affect qualified practitioners, and health care providers. The exclusive reference to physicians in the proposed rules creates a risk for future disputes similar to what affected the Medicare Recovery Audit Contractor program from 2013 to 2018 where the Medicare Recovery Audit Contractors interpreted a similar Medicare rule as requiring a signed physician order for inpatient admissions. After the RACs repeatedly denied inpatient claims CMS stated in the 2019 Inpatient Prospective Final Rule that “it was not our intent when we finalized the admission order documentation requirements that they should by themselves lead to the denial of payments for medically reasonable and necessary inpatient stays. CMS, Medicare IPPS Final Rule, 83 Fed. Reg. 41144, 41507 (Aug. 17, 2018). <https://www.govinfo.gov/content/pkg/FR-2018-08-17/pdf/2018-16766.pdf>

Potential confusion, and operational complexity could be avoided by harmonizing, to some degree, the language in the proposed rule with the corresponding Medicare rules by expressly supporting the role of other qualified practitioners in the direction, and supervision of hospital services. For example, the Medicare rule for hospital outpatient therapeutic services at 42 CFR § 410.27(a)(1) states that hospital outpatient therapeutic services must be furnished under the general supervision of a physician or a nonphysician practitioner, and general supervision means the procedure is furnished under the physician’s or nonphysician practitioner’s overall direction and control, but the physician’s or nonphysician practitioner’s presence is not required during the performance of the procedure. 42 CFR § 410.27(a)(1)(iv)(A).

We propose that section 4.201 be modified as follows to clarify the roles of physicians and other qualified practitioners in relation to outpatient services.

4.201 Outpatient Hospital Services

4.201.1 Definitions

For the purposes of this rule, the term:

(b) **Outpatient hospital services** means preventative, diagnostic, therapeutic, rehabilitative, or palliative services that are furnished to outpatients by or under the direction of a physician, naturopathic physician, or dentist; and are furnished by an institution that meets the definition of “hospital” in Health Care Administrative Rule 1.101 – Definitions. Under the direction of a physician refers to the overall direction and control of outpatient hospital services, and does not limit the authority of other qualified practitioners to order, and/or supervise outpatient hospital services in accordance with their hospital privileges, scope of practice, and applicable state law.

Also, the Medicare inpatient admission rule at 42 CFR § 412.3, states that that for the purposes of payment under Medicare Part A, an inpatient is admitted pursuant to an order by a *physician or other qualified practitioner with admitting privileges*..

We propose that section 4.200 be modified as follows to clarify the roles of physicians and other qualified practitioners in relation to inpatient services. .

- (a) **Inpatient** means a Vermont Medicaid beneficiary who has been admitted to a medical institution as an inpatient on recommendation of a physician, naturopathic physician, or dentist and who –
- (1) Receives room, board, and professional services in the institution for a 24-hour period, or
 - (2) Is expected by the institution to receive room, board, and professional services in the institution for a 24-hour period or longer even though it later develops that the patient dies, is discharged, or is transferred to another facility and does not actually stay in the institution for 24 hours.
 - (3) The recommendation of a physician refers to the overall direction and control of inpatient hospital services, and does not limit the authority of other qualified practitioners to admit patients, and order inpatient hospital services in accordance with their hospital privileges, scope of practice, and applicable state law.

Thank you for your consideration.

Sincerely,

John H. Wallace

Inpatient Hospital Services—Medical and Psychiatric

4.2007201 Inpatient Hospital Services—Medical and Psychiatric (07/26/201208/08/2023, 12-01-GCR 22-107)

4.200.1 Definitions

The following definitions shall apply for use in 4.200:

- (a) **Inpatient** means a Vermont Medicaid beneficiary who has been admitted to a medical institution as an inpatient on recommendation of a physician, naturopathic physician, dentist, or other qualified practitioner with admitting privileges and who –
- (1) Receives room, board, and professional services in the institution for a 24-hour period or longer, or
 - (2) Is expected by the institution to receive room, board, and professional services in the institution for a 24-hour period or longer even though it later develops that the patient dies, is discharged, or is transferred to another facility and does not actually stay in the institution for 24 hours.
- (b) **Inpatient hospital services** means services that:
- (1) are ordinarily furnished in a hospital for the care and treatment of inpatients;
 - (2) are furnished under the direction of a physician, naturopathic physician, or dentist;
 - (3) are furnished in a hospital that is maintained primarily for the care and treatment of patients with disorders other than mental diseases and meets the requirements for participation in Medicare as a hospital; and
 - (4) do not include skilled nursing facility and intermediate care facility services furnished by a hospital with a swing-bed approval.

4.200.2 Covered Services

- (a) Inpatient hospital services are covered by Vermont Medicaid according to the conditions for coverage at section 4.200.4 of this rule.
- (b) Inpatient psychiatric services provided in a hospital that is maintained primarily for the care and treatment of patients with disorders other than mental diseases are covered to the same extent as inpatient hospital services related to any other type of care or treatment.
- (c) Drugs furnished by the hospital as part of inpatient care and treatment, including drugs furnished in limited supply to permit or facilitate discharge from a hospital to meet the patient's requirements until a continuing supply can be obtained, are covered.

4.200.3 Conditions for Coverage

- (a) Coverage for inpatient hospital services is limited to those instances in which the admission and continued stay of the beneficiary are determined medically necessary by the appropriate utilization review authority.

~~(a)(b) Coverage for inpatient hospital services are covered is limited to hospitals included in the Green Mountain Care Vermont Medicaid provider network.~~

~~These hospitals are:~~

~~A Vermont hospital approved for participation in Medicare; or~~

~~Out of state hospitals that are included in the Green Mountain Care Network Due to their close proximity to Vermont and that it is the general practice of residents of Vermont to secure care and services at these hospitals.~~

~~(c) Coverage for hospitals outside of the Green Mountain Care Vermont Medicaid provider network is only available if:~~

~~(1) an out-of-network hospital is approved either for Medicare participation or for Medical Assistance (Title XIX) participation by the single state agency administering the Title XIX program within the state where it is located; and~~

~~(2) the admission receives any required prior authorization as described in Section 4.200.4 of this rule. For emergent and urgent inpatient care, notification to DVHA is required within 24 hours of admission or the next business day. For all other inpatient care, an authorization must be obtained prior to the provision of services. Emergency and urgent care is defined in Medicaid Rule 7101.3.~~

~~(b) The current list of hospitals included in the Green Mountain Care Network Vermont Medicaid provider network is located on the Department of Vermont Health Access web site (<http://dvha.vermont.gov/for-providers/green-mountain-care-network>).~~

~~(e)(d)~~

~~Coverage for inpatient hospital services is limited to those instances in which the admission and continued stay of the beneficiary are determined medically necessary by the appropriate utilization review authority.~~

~~(e) Coverage may also be extended for inpatients who are determined no longer in need of hospital care but have been certified for care in a nursing facility (Medicaid Rule 7606), behavioral health facility, or other specialized treatment center. (Medicaid Rule 7606).~~

4.200.4 Prior Authorization Requirements

~~(a) Elective inpatient admissions may require prior authorization at certain hospitals prior to the provision of services. Clinical prior authorization forms and the list of hospitals that require prior authorization for elective inpatient admissions can be found on the Department of Vermont Health Access website.~~

~~(b) Prior authorization is not required for emergent and urgent inpatient care, however, notification to Vermont Medicaid is required within 24 hours of admission or the next business day. Emergency services are defined in Health Care Administration Rule 4.102.~~

~~7201.1 Inpatient Services (07/26/2012, 12-01)~~

~~Covered services include:~~

~~A. Care in a semi-private (2-4 beds) room;~~

~~B. Private room if certified medically necessary by a physician to avoid jeopardizing the health of the patient or to protect the health and safety of other patients. (No payment will be made~~

for any portion of the room charge when the recipient requests and is provided with a private room for his or her personal comfort; i.e., when the private room is not medically necessary;

- C. ~~Use of intensive care unit;~~
- D. ~~Nursing and related services (except private duty nurses);~~
- E. ~~Use of hospital facilities, such as operating and recovery room, X ray, laboratory, etc;~~
- F. ~~Use of supplies, appliances and equipment, such as splints, casts, wheelchairs, crutches, etc.;~~ G. ~~— Blood transfusions;~~
- H. ~~Therapeutic services, such as X ray or radium treatment;~~
- I. ~~Drugs furnished by the hospital as part of inpatient care and treatment, including drugs furnished in limited supply to permit or facilitate discharge from a hospital to meet the patient's requirements until a continuing supply can be obtained;~~
- J. ~~Rehabilitation services, such as physical therapy, occupational therapy, and speech therapy services;~~
- K. ~~Diagnostic services, such as blood tests, electrocardiograms, etc., but only when these services are specifically ordered by the patient's physician and they are reasonable and necessary for the diagnosis or treatment of the patient's illness or injury.~~

~~7201.24.200.5 Excluded-Non-Covered Services — (07/26/2012, 12-01)~~

- (a) ~~— The following inpatient hospital services are excluded from coverage:~~
 - (1) ~~— Private room at patient's request for his their personal comfort;~~
 - (2) ~~— Personal comfort items such as telephone, radio, or television in hospital room;~~
 - (3) ~~— Private duty nurses; and~~
 - (4) ~~— Experimental treatment and other non-covered procedures.~~

~~7201.3 Dental Procedures — (07/26/2012, 12-01)~~

~~Coverage of inpatient hospital services for dental procedures is only in the following situations:~~

~~_____~~
~~For beneficiaries age 21 and over:~~

~~_____~~
~~When a covered surgical procedure is performed (see rule 7312); or~~

~~When prior authorization has been granted by the Department of Vermont Health Access in a case where hospitalization was required to assure proper medical management or control of non-dental impairment during performance of a non-covered dental procedure (e.g., a beneficiary with a history of repeated heart attacks must have all their other teeth extracted) and need for such hospitalization is certified by the physician responsible for the treatment of the non-dental impairment. Should the beneficiary already be hospitalized for the treatment of a medical condition and a non-covered dental procedure is performed during the hospital stay, prior authorization is not required. In these instances hospital and anesthesia charges are covered, but the services of the dentist performing the dental services are not.~~

~~_____~~
~~For beneficiaries under the age of 21:~~

~~When prior authorization has been granted by the Department of Vermont Health Access and the DVHA dental consultant certified that the beneficiary required hospitalization either for management of other medical conditions or to undergo dental treatment.~~

~~7201.4 Psychiatric Care (07/26/2012, 12-01)~~

~~Inpatient psychiatric services provided in a hospital are covered to the same extent as inpatient services related to any other type of care or treatment. Authorization requirements are defined in Rule 7201.~~

~~7201.5 Care of Newborn Child (07/26/2012, 12-01)~~

~~For the period after the initial seven days or until the mother is discharged, whichever is earlier, coverage for continuing inpatient care of a newborn child requires application for and determination of the newborn child's eligibility, a separate Medicaid identification number and separate billing.~~

~~7201.6 Reimbursement (07/26/2012, 12-01)~~

~~Reimbursement for inpatient services is described in the Provider Manual, the State Plan, and the UB-04 Billing Manual.~~

Inpatient Hospital Services

4.200 Inpatient Hospital Services (08/08/2023, GCR 22-107)

4.200.1 Definitions

The following definitions shall apply for use in 4.200:

- (a) **Inpatient** means a Vermont Medicaid beneficiary who has been admitted to a medical institution as an inpatient on recommendation of a physician, naturopathic physician, dentist, or other qualified practitioner with admitting privileges and who –
- (1) Receives room, board, and professional services in the institution for a 24-hour period or longer, or
 - (2) Is expected by the institution to receive room, board, and professional services in the institution for a 24-hour period or longer even though it later develops that the patient dies, is discharged, or is transferred to another facility and does not actually stay in the institution for 24 hours.
- (b) **Inpatient hospital services** means services that:
- (1) are ordinarily furnished in a hospital for the care and treatment of inpatients;
 - (2) are furnished under the direction of a physician, naturopathic physician, or dentist;
 - (3) are furnished in a hospital that is maintained primarily for the care and treatment of patients with disorders other than mental diseases and meets the requirements for participation in Medicare as a hospital; and
 - (4) do not include skilled nursing facility and intermediate care facility services furnished by a hospital with a swing-bed approval.

4.200.2 Covered Services

- (a) Inpatient hospital services are covered by Vermont Medicaid according to the conditions for coverage at section 4.200.4 of this rule.
- (b) Inpatient psychiatric services provided in a hospital that is maintained primarily for the care and treatment of patients with disorders other than mental diseases are covered to the same extent as inpatient hospital services related to any other type of care or treatment.
- (c) Drugs furnished by the hospital as part of inpatient care and treatment, including drugs furnished in limited supply to permit or facilitate discharge from a hospital to meet the patient's requirements until a continuing supply can be obtained, are covered.

4.200.3 Conditions for Coverage

- (a) Coverage for inpatient hospital services is limited to those instances in which the admission and continued stay of the beneficiary are determined medically necessary by the appropriate utilization review authority.
- (b) Inpatient hospital services are covered at hospitals included in the Vermont Medicaid provider network.

- (c) Coverage for hospitals outside of the Vermont Medicaid provider network is only available if:
 - (1) an out-of-network hospital is approved either for Medicare participation or for Medical Assistance (Title XIX) participation by the single state agency administering the Title XIX program within the state where it is located; and
 - (2) the admission receives any required prior authorization as described in Section 4.200.4 of this rule.
- (d) The current list of hospitals included in the Vermont Medicaid provider network is located on the Department of Vermont Health Access web site.
- (e) Coverage may also be extended for inpatients who are determined no longer in need of hospital care but have been certified for care in a nursing facility (Medicaid Rule 7606), behavioral health facility, or other specialized treatment center.

4.200.4 Prior Authorization Requirements

- (a) Elective inpatient admissions may require prior authorization at certain hospitals prior to the provision of services. Clinical prior authorization forms and the list of hospitals that require prior authorization for elective inpatient admissions can be found on the Department of Vermont Health Access website.
- (b) Prior authorization is not required for emergent and urgent inpatient care, however, notification to Vermont Medicaid is required within 24 hours of admission or the next business day. Emergency services are defined in Health Care Administration Rule 4.102.

4.200.5 Non-Covered Services

- (a) The following inpatient hospital services are excluded from coverage:
 - (1) Private room at patient's request for their personal comfort;
 - (2) Personal comfort items such as telephone, radio, or television in hospital room;
 - (3) Private duty nurses; and
 - (4) Experimental treatment and other non-covered procedures.

VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

Title 3 : Executive

Chapter 025 : Administrative Procedure

Subchapter 001 : General Provisions

(Cite as: 3 V.S.A. § 802)

§ 802. Repealed. 1981, No. 82, § 7(1).

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 that 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. § 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: Feb 15, 2023

Please submit comments to the agency or primary contact person listed below, before the deadline.

Rule Details

Rule Number:	22P040
Title:	Inpatient Hospital Services.
Type:	Standard
Status:	Proposed
Agency:	Agency of Human Services
Legal Authority:	3 V.S.A. § 802(b)(11); 33 V.S.A. § 1901(a)(1)
Summary:	This rule sets forth the criteria for coverage of inpatient hospital services under Vermont's Medicaid program. It amends Medicaid Covered Services Rule 7201 - Inpatient Services - Medical and Psychiatric. Revisions include: new definitions informed by federal Medicaid law; clarifying language on the Vermont Medicaid provider network and prior authorization requirement for elective admissions; and removal of content that is described in other administrative rules, the Medicaid State Plan, and/or the Medicaid Provider Manuals.

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; and health care providers.

Economic Impact: This 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 2023. The changes and amendments conform the rule with current practice and changes to federal and state laws that have already been implemented.

Posting date: Dec 28,2022

Hearing Information

Information for Hearing # 1

Hearing date: 02-08-2023 2:00 PM [ADD TO YOUR CALENDAR](#)

Location: Oak 49 Conference Room, State Office Complex

Address: 280 State Drive

City: Waterbury

State: VT

Zip: 05671-1000

Hearing Notes: Also virtually: Phone or Microsoft Teams call in (802)552-8456, Phone Conference ID: 796 336 327# Live link available from the Public Notice in the Global Commitment Register on the AHS website.

Contact Information

Information for Primary Contact

PRIMARY CONTACT PERSON - A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE.

Level: Primary

Name: Ashley Berliner

Agency: Agency of Human Services

Address: Waterbury State Office Complex, 280 State Drive

City: Waterbury

State: VT

Zip: 05671-1000

Telephone: 802-578-9305

Fax: 802-241-0450

Email: ahs.medicaidpolicy@vermont.gov

[SEND A COMMENT](#)

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

[VIEW WEBSITE](#)

Information for Secondary Contact

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.

Level: Secondary
Name: Danielle Fuoco
Agency: Agency of Human Services
Address: 280 State Drive, Center Building
City: Waterbury
State: VT
Zip: 05671
Telephone: 802-585-4265
Fax: 802-241-0450
Email: danielle.fuoco@vermont.gov

[SEND A COMMENT](#)

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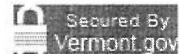
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	Times Argus / Rutland Herald Melody Hudson (classified.ads@rutlandherald.com) Elizabeth Marrier elizabeth.marrier@rutlandherald.com)	Tel: 802-747-6121 ext 2238 FAX: 802-776-5600
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	News & Citizen (mike@stowereporter.com) Irene Nuzzo (irene@newsandcitizen.com and ads@stowereporter.com .com removed from distribution list per Lisa Stearns.	Tel: 888-2212 FAX: 888-2173 Attn: Bryan
	St. Albans Messenger Ben Letourneau (ben.letourneau@samessenger.com)	Tel: 524-9771 ext. 117 FAX: 527-1948 Attn: Ben Letourneau
	The Islander (islander@vermontislander.com)	Tel: 802-372-5600 FAX: 802-372-3025
	Vermont Lawyer (hunter.press.vermont@gmail.com)	Attn: Will Hunter

FROM: APA Coordinator, VSARA

Date of Fax: December 27, 2022

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

January 5, 2023

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 VSARA at 802-828-3700, or E-Mail sos.statutoryfilings@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).

Antidegradation Implementation Rule.

Vermont Proposed Rule: 22P038

AGENCY: Agency of Natural Resources

CONCISE SUMMARY: The proposed rule lays out the process for implementing Vermont's antidegradation policy. Vermont's antidegradation policy requires that existing uses of waters and the level of water quality necessary to protect those uses shall be maintained and protected. To implement this policy, the proposed rule requires an analysis of water quality impacts, to be conducted during the review of applications for permits authorizing activities that are required to comply with the Vermont WQS. The rule includes a list of permits subject to antidegradation review, the required public process, and the three-tiered analysis of water quality impacts: Protection of Outstanding Resource Waters, protection of High Quality Waters, and protection of Existing Uses. The rule also includes an analysis for determining when a reduction in receiving-water quality is allowable, based on evaluation of the subsequent socioeconomic impact of not allowing the proposed activity.

FOR FURTHER INFORMATION, CONTACT: Bethany Sargent, DEC Monitoring and Assessment Program, Agency of Natural Resources, 1 National Life Drive, Davis 3, Montpelier, Vermont, 05620-3522 Tel: 802-490-6131 Fax: 802-828-1544 Email: bethany.sargent@vermont.gov URL: <https://dec.vermont.gov/watershed/laws/#Rulemaking>.

FOR COPIES: Hannah Smith, DEC Office of General Counsel, Agency of Natural Resources, 1 National Life Drive, Davis 2, Montpelier, Vermont, 05620-1544 Tel: 802-461-8187 Fax: 802-828-1544 Email: hannah.smith@vermont.gov

NOTE: The three rules below have been promulgated by the Agency of Human Services who has requested the notices be combined to facilitate a savings for the agency. When contacting the agency about these rules please note the title and rule number of the proposed rule(s) you are interested in.

- Health Care Administrative Rules Definitions – Vermont Proposed Rule: **22P039**
- Inpatient Hospital Services – Vermont Proposed Rule: **22P040**
- Outpatient Hospital Services – Vermont Proposed Rule: **22P041**

AGENCY: Agency of Human Services

CONCISE SUMMARY: The proposed rules set forth 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 three rules align with relevant federal and state law and guidance. The amendment to Definitions adds a definition for hospital. The amendments to Inpatient Hospital Services and Outpatient Hospital Services were made to be consistent with HCAR language and formatting, revised to include new definitions informed by federal Medicaid law, and removed content described in other policies or beyond the scope of these rules.

FOR FURTHER INFORMATION, CONTACT: Dani Fuoco Agency of Human Services 280 State Drive, Waterbury, VT 05671-1000; Tel: 802-585-4265; Fax: 802-241-0450; E-mail: danielle.fuoco@vermont.gov; URL: <https://humanservices.vermont.gov/rules-policies/health-care-rules/health-care-administrative-rules-hcar>
