

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:

Medicaid Coverage of Exception Requests

/s/ Todd W. Daloz , on 1/19/24
(signature) (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:

Medicaid Coverage of Exception Requests

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

23P021

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: 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: Linda Narrow McLemore

Agency: Agency of Human Services

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

Telephone: 802-779-3258 Fax: 802-241-0450

E-Mail: Linda.McLemore@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 affords 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 Medicaid coverage pursuant to the Exceptions Request process. It amends current Medicaid Services Rule 7104 titled "Requesting Coverage Exceptions." Revisions include: (1) stating that the process only applies to beneficiaries age 21 years old or older, (2) stating that certain criteria are mandatory, (3) clarifying eligibility criteria, (4) changing the frequency that certain approved exception requests are published on the website of the Department of Vermont Health Access, and (5) removing references to the Interpretive Memo process and incorporating related processes into the rule.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

The rule is necessary to define the criteria for coverage pursuant to the Exceptions Request process. This amendment aligns rule with federal and state guidance and law, improves clarity, and makes technical corrections.

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; health care providers; and health law, policy and related advocacy and community-based organizations and groups including the Office of Health Care Advocate.

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 2024. The changes and amendments to eligibility criteria for an Exception Request conform the rule with current practice.

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: 8/9/2023

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; to be added

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

Zip Code: 05671

URL for Virtual:

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

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

8/16/2023

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

Exception Request

Requesting Coverage Exception

Medicaid

Health Care Administrative Rules

HCAR



State of Vermont
Agency of Human Services
280 State Drive
Waterbury, VT 05671-1000
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
Rep. Trevor Squirrel, Chair, Legislative Committee on Administrative Rules (LCAR)

From: Ashley Berliner, Director of Health Care Policy and Planning, Agency of Human Services

Cc: Todd Daloz, Deputy Secretary, Agency of Human Services
Charlene Dindo, Committee Assistant, Legislative Committee on Administrative Rules
Louise Corliss, APA Coordinator, Secretary of State's Office

Date: January 12, 2024

Re: Agency of Human Services Final Proposed Rule Filing

Enclosed is the final proposed rule filing for Health Care Administrative Rule (HCAR) 4.105, titled Medicaid Coverage of Exception Requests. This rule is also referenced as 23P021.

Public comments were received during the public comment period and those are enclosed and are addressed in the Responsiveness Summary.

In response to public comments, these changes were made to HCAR 4.105:

- HCAR 4.105.2(B)(7) was revised to provide that if an alternative treatment is contraindicated for the Medicaid enrollee, that the enrollee is not required to undergo a trial of that treatment.
- HCAR 4.105.2(B)(4) was revised to remove the “no rational basis” language and to replace it with a requirement that a denial of the requested service would be arbitrary.

Additionally, the following changes were made to HCAR 4.105 since the proposed filing:

- HCAR 4.105.2(B)(4) was revised to remove the prohibition on denying coverage based on diagnosis, illness, or condition as the text was added in error and is inconsistent with federal Medicaid law at 42 CFR 438.210(a)(3).
- HCAR 4.105.2(B) was revised to restore the words “in combination” to the rule in order to improve clarity.

The above changes are indicated in red and highlighted in grey in the annotated copy of the final proposed rule.

If you have any questions, please contact Linda Narrow McLemore, Staff Attorney, at Linda.McLemore@Vermont.gov.

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: Sarah Copeland Hanzas, Secretary of State

FROM: Jenney Samuelson, Secretary, Agency of Human Services

A handwritten signature in blue ink, appearing to be "Jenney Samuelson", written over the "FROM:" line.

DATE: January 31, 2023

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

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:

Medicaid Coverage of Exception Requests

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 # 08-040 (10/1/08) (rules amended, renumbered, and reorganized); Requesting Coverage Exceptions, effective 4/1/1999



INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: June 12, 2023, virtually via Microsoft Teams
Members Present: Chair Sean Brown, Brendan Atwood, Jennifer Mojo, Diane Sherman, Michael Obuchowski, Donna Russo-Savage, Nicole Dubuque and Jared Adler
Members Absent: John Kessler
Minutes By: Melissa Mazza-Paquette

- 2:00 p.m. meeting called to order, welcome and introductions.
- Review and approval of [minutes](#) from the May 8, 2023 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. Rule 5.400 5.400 Petitions to Construct Electric and Gas Facilities Pursuant to 30 V.S.A. §248, Public Utility Commission, page 2
 2. 5.100 Rule Pertaining to Construction and Operation of Net-Metering Systems (the "Net-Metering Rule"), Vermont Public Utility Commission, page 3
 3. Rule 5.500: Interconnection Procedures For Proposed Electric Generation Resources And Energy Storage Devices, Vermont Public Utility Commission, page 4
 4. Education Quality Standards (Rule Series 2000), State Board of Education, page 5
 5. Vermont Use of Public Waters Rules, Agency of Natural Resources, page 6
 6. Medicaid Coverage of Exception Requests, Agency of Human Services, page 7
- Committee discussion postpone to a future meeting date:
 - Potential resources available for proposed rules to be reviewed for copyediting prior to presenting to ICAR.
 - Use of terms 'regulation' and 'promulgation': Administrative Procedure Act rules are adopted. Regulations are not promulgated.
- Other business: Donna Russo-Savage resigned from ICAR effective with her retirement date of June 30, 2023.
- Next scheduled meeting is July 10, 2023 at 2:00 p.m.
- 3:54 p.m. meeting adjourned.

Proposed Rule: Medicaid Coverage of Exception Requests, Agency of Human Services

Presented By: Linda McLemore

Motion made to accept the rule by Diane Sherman, seconded by Jen Mojo, and passed unanimously except for Brendan Atwood who abstained and Jared Alder who left the meeting early, with the following recommendations:

1. Proposed Rule:
 - a. 4.105.2 (A)(4): Change to begin with a verb to align with 1-3 tenses.
 - b. 4.105.2 (B): Change the period at the end of the sentence to a colon.

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:

Medicaid Coverage of Exception Requests

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:

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

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 2024. The changes and amendments to eligibility criteria for an Exception Request conform the rule with current practice.

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 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.