

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.

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:

Medicaid Coverage of Exception Requests

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 IMPACTS 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:

Medicaid Coverage of Exception Requests

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 the Medicaid and Exchange Advisory Committee (MEAC), Vermont Legal Aid (VLA), Vermont Medical Society (VMS), Vermont Association of Hospitals and Health Systems (VAHHS), Vermont Care Partners (VCP), Bi-State Primary Care Association, and the VNAs of Vermont on 3/1/23. No comments were received.

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

Public Input

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;

Health Care Advocate, Vermont Legal Aid Society;

Medicaid and Exchange Advisory Committee;

Vermont Medical Society;

Vermont Association of Hospitals and Health Systems;

Vermont Care Partners; and

Bi-State Primary Care Association.

Responsiveness Summary

HCAR 4.105 General

Summary of comment: The commenter states that they have no opposition to the proposed rule's clarification of current practice, i.e., that the exception request process is not available to enrollees under 21 years old. The commenter also states that Medicaid notices of decision to enrollees under 21, that are sent outside of the exception request process, should be in plain language, explain EPSDT coverage, and provide appeal rights.

Response: Vermont Medicaid appreciates the commenter's support for this rule that recognizes that Medicaid enrollees under 21 years old are already entitled to all mandatory and optional services that may be covered by Medicaid; therefore, their coverage is already broader than what is permitted by the exception request process.

The commenter's recommendations regarding EPSDT notices to enrollees are outside of the scope of this rulemaking.

HCAR 4.105.2 Criteria

Summary of comment: The commenter makes three points:

- That HCAR 4.105.2(B)(7) should permit coverage if a less expensive, medically appropriate alternative service is available but is "contraindicated for the individual,"
- That HCAR 4.105.2(B)(2) is duplicative of 4.105.2(A)(1), and
- That the criteria at proposed HCAR 4.105.2(B)(4), i.e., that there be "no rational basis" for excluding the coverage, should be revised.

Response:

Comment that HCAR 4.105.2(B)(7) permits coverage if less expensive and medically appropriate alternatives are "contraindicated for the individual"

Vermont Medicaid agrees with the commenter that if an alternative treatment is contraindicated for the enrollee, that an enrollee should not be required to undergo a trial of that treatment. The final proposed rule at (B)(7) includes the commenter's suggested revision.

Comment that HCAR 4.105.2(B)(2) is duplicative of 4.105.2(A)(1)

The criteria at HCAR 4.105.2(B)(2) and HCAR 4.105.2(A)(1) are similar but not the same, and both are needed; therefore, Vermont Medicaid will be retaining both criteria.

The criteria listed in subsection (A) are mandatory. If any of these criteria are not met, then the service is denied and the criteria at subsection (B) are not considered. By contrast, the criteria listed at subsection (B) are not all required but are instead

considered in combination by the agency in determining whether an exception request should be approved.

The mandatory criteria at subsection(A)(1) provides that the requested service must be one that can be covered under one of the categories or subcategories described as an optional or mandatory service in the Medicaid Act. 42 USC 1396d(a) 42 USC 1396d(a) contains a list of the broadest potential coverage of services under Medicaid, a description of services that a Medicaid agency must cover and those that may be covered at state option. To be approved for a coverage exception, the requested service must be one that can be covered under the Medicaid Act as either a mandatory or optional service. If it cannot, then the service requested will be denied.

If the criteria at subsection (A) are met, then there will be a determination whether the criteria at subsection (B) can be met. The criteria at (B)(2), like the one at (A)(1), requires that the requested service fit in a category or subcategory of mandatory or optional services, but, unlike (A)(1), also requires that the service be one that is within a mandatory or optional category of services that is *offered by Vermont Medicaid for adults*.

In summary, the two criteria at issue are not duplicative; therefore, Vermont Medicaid will not be revising the rule in this regard.

Comment opposing the criteria that there be “no rational basis” for excluding the coverage

Vermont Medicaid is striking the “no rational basis” text that the commenter opposes and replacing it with text that a denial of the service would be arbitrary.

HCAR 4.105.4 Approvals

Summary of comment: The commenter opposes Vermont Medicaid’s proposal to publish, on its website, a list of approved exception requests on an annual basis instead of a semiannual basis (twice a year).

Response: Vermont Medicaid has been publishing a list of exception request approvals, including details about the reason for the approval, on its website on an annual basis for the last several years. The change from publishing it twice annually was a result of increasingly limited staff resources at DVHA. Vermont Medicaid continues to have limited staff resources and, for this reason, is not revising this rule in the way proposed by the commenter.

HCAR 4.105.5 Adverse Decisions

Summary of comment: The commenter makes three points regarding adverse decisions on an exception request:

- That the regulation and the notice of decision should state that the enrollee may have a right to an expedited appeal,
- That the rule should not provide the standard of review in fair hearings, and
- That there should not be a 12 month restriction on resubmitting the same exception requests.

Response:

Comment on right to expedited appeal

HCAR 8.100 provides that Medicaid enrollees that receive an adverse decision from Vermont Medicaid, including those who receive one in the exception request process, have a right to an expedited fair hearing if they meet required criteria, but do not have a right to an expedited internal appeal. All notices of decision that deny an exception request have been revised to include a description of the right to an expedited fair hearing.

Because the rule at HCAR 8.100 already provides for the right to an expedited fair hearing, Vermont Medicaid is not revising the text of this proposed rule to include the text suggested by the commenter.

Comment on standard of review

The proposed rule at HCAR 4.105.5(B) simply codifies in rule the standard of review applied by the Human Services Board (hereinafter “the Board”) in all exception request appeals. The Board recognizes that the standard of review for the exception request process, in which an enrollee seeks coverage of a service that is not covered by Vermont Medicaid, provides greater discretion to Vermont Medicaid than the standard of review that is applied in appeals related to Medicaid covered services. Over the lifetime of the exception request rule, the Board has consistently held that exception request decisions will not be overturned unless there is a determination that the agency abused its discretion. As recently as 2023, the Board stated the following in a decision (Fair Hearing No. B-07/23-501) upholding the agency’s decision to deny an exceptions request for weight loss medication:

The Board has consistently held that decisions regarding Rule 7104 fall within the discretion of the Department and will not be overturned absent an abuse of discretion. The abuse of discretion standard is a “difficult burden” to overcome for the party who must demonstrate that abuse. In re John L. Norris Trust, 143 Vt. 325, 327 (1983)(citing State vs. Savo, 141 Vt. 203, 208 (1982)). Abuse of discretion arises when the Department totally withholds its discretion, or exercises its discretion on untenable or unreasonable grounds. Turner v. Roman Catholic Diocese, 2009 VT 101, paragraph 10, 186 Vt. 396. If the Department has a reasonable basis for its decision, the Board must defer to that decision even if another result might have been supportable or a different conclusion reached. In re L.R.R., 143 Vt. 560, 562-63 (1983)(internal citations omitted).

Thus, in a case involving the Medicaid exception process, a decision will not be reversed unless the Department has clearly abused its discretion by either failing to consider and address all of the pertinent medical evidence under each criterion set forth above or by reaching a result that cannot be reasonably supported by the evidence or that is otherwise “arbitrary.” See, e.g., Fair Hearing No. B-10/12-617; Fair Hearing No. M-03/14-216, Fair Hearing No. J-03/14-209, Fair Hearing No. T-11/10-595.

Comment on resubmission of the same exception request within 12 months

The limitation on resubmitting an exception request on a service for which an enrollee has received a denial in the last twelve months is not new; it has existed in rule since at least 1999. This limitation ensures a reasonable balance between the need for administrative finality, i.e., that the same issue is not repeatedly relitigated within a short time frame, with the need for an enrollee to renew a request when relevant circumstances have changed. The proposed rule, like the current rule, provides the circumstances in which an enrollee can request the same service within a year period (new documentation not previously available, a material change in the enrollee’s condition, new and material medical evidence, or a material change in technology). Vermont Medicaid is not revising this rule in the way recommended by the commenter.



264 North Winooski Ave., Burlington, VT 05401
802-863-5620 ■ 800-747-5022
www.vtlawhelp.org ■ Fax: 802-863-7152

By email to: AHS.MedicaidPolicy@vermont.gov

August 15, 2023

Agency of Human Services
280 State Drive, Center Building
Waterbury, VT 05671-1000

Re: HCAR Filing 11 Proposed Rules (GCR 23-091);
4.105 Medicaid Coverage of Exception Requests

Dear Medicaid Policy Unit:

Thank you for the opportunity to comment on the proposed changes to the HCAR rule governing 4.105 Medicaid Coverage of Exception Requests. The Office of the Health Care Advocate, the Disability Law Project, the Elder Law Project, and the Vermont Ombudsmen Project at Vermont Legal Aid, submit the following comments in response to the proposed HCAR changes:

1. Section 4.105.1 General

Under the proposed change, requests from beneficiaries under 21 years old will be processed pursuant to requirements of HCAR 4.106, Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services. We do not object to this change, but it must be accompanied by a revision of the notices that beneficiaries and their family members or guardians receive.

Beneficiaries need clear, plain-language notices about EPSDT coverage standards for the notices to be meaningful. These notices should provide background information on EPSDT and describe what it can cover. The notices should state that EPSDT can cover services that would not be covered for adults. Finally, notices should clearly outline the appeal process. Vermont Legal Aid proposes that DVHA write a new EPSDT notice with input from both the Office of the Health Care Advocate and Disability Law Project.

2. Section 4.105.2 Criteria

The criteria at (B)(2) appears to be duplicative of (A)(1) as they both require a category under 1396d(a).

(A)(1) "Fit within a category or subcategory of services described at 42 U.S.C. 1396d(a)."

(B)(2) "The service fits within a category or subcategory of services described at 42 U.S.C. 1396d(a) that is offered by Vermont Medicaid for adults"

We object to changing the standard for the criteria at (B)(4) to "no rational basis" from the existing regulation which allows for consideration of whether or not there is a rational basis. Requiring "no rational basis" conflicts with the stated purpose of including this criterion, which is set out clearly in the next sentence, not to deny the request "arbitrarily".

(B)(4) "There is ~~no~~ a rational basis for ~~excluding~~ approving coverage of the service. The purpose of this criterion is to ensure that DVHA does not arbitrarily deny coverage for a service. Vermont Medicaid may not deny coverage for a service solely based on diagnosis, illness, or condition, or solely based on its cost."

The criteria at (B)(7) should include "or are contraindicated for the individual". If the alternative treatment is contraindicated for the individual, the individual should not be required to undergo a failed trial of that treatment.

(B)(7) "Less expensive, medically appropriate alternatives are not available, or have been trialed and failed, or are contraindicated for the individual."

3. Section 4.105.4 Approvals

Vermont Legal Aid objects to the proposal to change the publication of the list of approved services from semi-annually to annually. In addition to publishing, it on the website, DVHA should affirmatively share each updated list with the Office of the Health Care Advocate. The list should also be detailed enough to be meaningful to similarly situated Medicaid beneficiaries and should include enough details to clearly explain why a service was approved.

4. Section 4.105.5 Adverse Decisions

As these exception requests may pertain to services that are critical to meeting individual's needs, both this regulation and the notice of decision should explicitly state the individual's right to request an expedited appeal.

(A) "Vermont Medicaid will inform a beneficiary who receives an adverse decision of their right to appeal through the State fair hearing process. The notice will include an explanation of the beneficiary's right to request an expedited appeal."

We also object to the language in paragraph (B) restricting review.

(B) "A reviewing authority may not reverse the Commissioner's or their designee's decision unless it determines that the decision was an abuse of discretion."

This language is not appropriate in this regulation specifying the coverage criteria. Federal regulations governing Medicaid appeals, HCAR 8.100 governing appeals, as well as Vermont law providing for a right to an appeal before the Human Services Board fully set out the appeal process and the correct standard for review of an exception request.

We further object to the twelve- month ban on resubmitting requests.

(C) "A request for a service for which there has been an adverse decision may not be renewed by the same beneficiary until twelve months have elapsed since the previous final decision or until one of the following has been demonstrated"

Many of these exception requests will be submitted by the beneficiary directly without legal representation and may be denied for lack of adequate documentation. The one-year restriction on submitting a renewed request should not be a complete bar. We suggest adding "reasonably" to (1) and adding an exception for good cause in some circumstances:

(1) New documentation of the individual's condition that was not reasonably available at the time of the prior request

Exception: A request shall be considered notwithstanding the one-year bar if (1) the basis for denial was lack of adequate documentation and the individual had a barrier to submitting the necessary documentation in the initial request or (2) the individual has a disability, and the disability impacted the individual's ability to submit documentation with the initial request; or (3) for other good cause.

Thank you for considering our comments.

/s/ Marjorie Stinchcombe

Marjorie Stinchcombe
Helpline Director
Office of the Health Care Advocate
Vermont Legal Aid

s/ Michael Benvenuto

Michael Benvenuto
Project Director
Elder Law Project
Vermont Legal Aid

/s/ Rachel Seelig

Rachel Seelig
Project Director
Disability Law Project
Vermont Legal Aid

/s/ Kaili Kuiper

State Long Term Care Ombudsman/Project Director
Vermont Ombudsman Project
Vermont Legal Aid

Annotated
Text

INTERPRETIVE MEMO

~~[X] Medicaid Covered Services Rule Interpretation~~

~~[] Medicaid Covered Services Procedure Interpretation~~

~~This interpretive memo remains effective statewide until it is specifically superseded either by a subsequent interpretive memo or by a contradictory rule with a later date.~~

~~Reference 7104 Date of this Memo 07/01/1999 Page 1 of 1~~

~~This Memo: [X] is New [] Replaces one dated _____~~

~~QUESTION: Can a traditional Medicaid beneficiary request coverage of a brand name prescription drug that is presently not available because the manufacturer does not participate in the Federal Drug Rebate Program through the rule 7104 Procedure?~~

~~ANSWER: Yes. On July 1, 1999, additional criteria were adopted for the rule 7104 Procedure. The following criteria will be taken into account when reviewing requests for prescription drugs not on a list pre approved for coverage because the drug manufacturer does not participate in the Federal Drug Rebate Program. If the currently covered drug:~~

- ~~A. has not been effective in treating the patient's medical condition; or~~
- ~~B. causes or is reasonably expected to cause adverse or harmful reactions in the beneficiary.~~

INTERPRETIVE MEMO

~~[X] Medicaid Covered Services Rule Interpretation~~

~~[] Medicaid Covered Services Procedure Interpretation~~

~~This interpretive memo remains effective statewide until it is specifically superseded either by a subsequent interpretive memo or by a contradictory rule with a later date.~~

~~Reference 7104 Date of this Memo 10/1/2014 Page 1 of 13~~

~~This Memo: [] is New [X] Replaces one dated 4/1/2014~~

~~QUESTION: Were there any negotiated settlements, decisions reversed by the Human Services Board, Vermont Supreme Court, or favorable rulings from April 1, 1999 through October 1, 2014?~~

~~ANSWER: There was one approval for acupuncture and herbal supplements as a result of a negotiated settlement.~~

~~There was one rule 7104 denial that was reversed by the Human Services Board ordering the DVHA to pay for a pool pass for one beneficiary.~~

~~There was one rule 7104 denial that was reversed by the Human Services Board ordering the DVHA to pay for dentures for one beneficiary.~~

~~The Office of Vermont Health Access covered the items specified below, for the requesting individuals only and not for the entire Medicaid population, unless marked with an asterisk (*).~~

~~*Abdominal Implant—One beneficiary continued to suffer from intractable abdominal pain after exhausting all other pain regimens.~~

~~Acupuncture—One beneficiary suffered from long term chronic pain after exhausting all other pain regimens;~~

~~One beneficiary, aged two, suffered from a rare liver condition causing skin irritation;~~

~~One elderly beneficiary with a history of neurological disorder was unable to take pain medication or engage in traditional therapies;~~

~~One beneficiary continued to suffer from severe stump pain despite use of medication (including morphine, neurontin and serotonin enhancing agents), spinal cord stimulation, TENS, nerve block, topical patches, surgical stump revisions, and participation in pain management clinics;~~

~~One beneficiary had severe facial pain of unknown etiology requiring extensive pain medication.~~

~~*Adaptive Weighted Eating Utensils—One beneficiary experienced neurological decline causing weakness and tremors that interfered with daily activities, including the ability to self-feed.~~

~~Air Conditioner—One beneficiary with partial lung removal suffered from Chronic Obstructive Pulmonary Disease with a history of avium pneumonia with increased risk for infection;~~

INTERPRETIVE MEMO

Medicaid Covered Services Rule
Interpretation

Medicaid Covered Services Procedure
Interpretation

This interpretive memo remains effective statewide until it is specifically superseded—either by a subsequent interpretive memo or by a contradictory rule with a later date.

Reference 7104 Date of this Memo 10/1/2014 Page 2 of 13

This Memo: is New Replaces one dated 4/1/2014

~~One beneficiary with significant pulmonary/cardiac disease required cooling/dehumidification to prevent recurrent hospitalization/placement in a nursing home;~~

~~One beneficiary had multiple cardiac, physical, diabetic, renal and pulmonary impairments, morbid obesity, anemia, recurrent ulcerations, COPD, sleep apnea, chronic hypertension, peripheral edema and DJD on oxygen therapy;~~

~~One patient with a history of open heart surgery suffered severe congenital heart disease and recurrent arrhythmias requiring cooling and dehumidification during hot/humid weather preventing hospitalization and placement in a nursing home;~~

~~One beneficiary suffered rare brain damage following excision of a tumor that disrupted thermoregulation of body temperature necessary to maintain organ functioning.~~

~~One beneficiary with multiple complex medical problems including Down syndrome, seizure disorder, history of recurrent aspiration pneumonia, deep vein thrombus, incontinence, MRSA, and was bedridden requiring a high degree of personal care to maintain skin integrity was at risk for serious pulmonary complications and life threatening skin infections.~~

~~One child with cystic fibrosis, alpha 1 antitrypsin deficiency, and malabsorption was at risk for dehydration, electrolyte imbalance, hyponatremia, seizures, and death.~~

~~One child with multiple disabilities including profound mental retardation, mutism, and anhydrosis (inability to sweat) was at risk for heat exhaustion, heat stroke, and death~~

~~One beneficiary with end stage COPD and limited pulmonary function exacerbated by hot humid air and dust was at risk for shortness of breath and emergency hospitalization.~~

~~Air Purifier—Two children suffered from congenital cystic fibrosis with asthma and recurrent hospitalizations for breathing problems.~~

~~Banked Breast Milk—For a four month period for one infant with microcephaly, rectovaginal fistula, imperforate anus, chromosome anomaly, CHF, horseshoe kidney, poor feeding necessitating the placement of percutaneous gastronomy tube, gastroesophageal reflux, poor growth, allergic colitis, history of febrile urinary tract infection, and formula intolerance. Without banked breast milk the infant was at risk for urinary tract infections, hospitalization, and malnutrition preventing the infant from receiving the surgery necessary to move on to solid foods.~~

~~Brand Name Librium—The beneficiary was unable to tolerate the generic form of Librium.~~

INTERPRETIVE MEMO

Medicaid Covered Services Rule Interpretation

Medicaid Covered Services Procedure Interpretation

This interpretive memo remains effective statewide until it is specifically superseded—either by a subsequent interpretive memo or by a contradictory rule with a later date.

Reference 7104 Date of this Memo 10/1/2014 Page 3 of 13

This Memo: is New Replaces one dated 4/1/2014

~~BiCROS Hearing Aid—One beneficiary with traumatic brain injury, depression and epilepsy who has had a vagus nerve stimulator implanted.~~

~~Brand Name Valium—Three beneficiaries were unable to tolerate the generic form of Valium.~~

~~Cast Crown—One beneficiary with hypercalcaemia was unable to use a resin fabricated crown due to frequent vomiting, and was at risk for sub-acute infection, chronic pain and inflammation.~~

~~One beneficiary with severe asthma and severe facial cellulitis with a history of sepsis due to dental infections was at risk for overwhelming sepsis, further abscesses, and infection.~~

~~Chiropractic Treatment—One beneficiary who suffered from Hepatitis C, cirrhosis of the liver, portal hypertension, depression, esophageal varices, addiction and chronic pain from spinal mal-alignment failed conservative treatment regimens.~~

~~Completely in the Canal (CIC) Hearing Aids—One beneficiary required nighttime tube feeding, had superior semi-circular canal dehiscence with bilateral hearing loss, experienced autophony in one ear, disequilibrium, conductive hearing loss in both ears, severe chronic dry-eye syndrome, diplopia, and nystagmus requiring lids need to be physically shut and blocked throughout the night. Beneficiary was at risk of a potentially life-threatening event if unable to be awakened by an audible feeding pump alarm alerting to an occluded feeding tube. No other form of hearing aid or feeding pump alarm system was shown to be effective given the beneficiary's complex combination of conditions.~~

~~Contact Lenses—One beneficiary who had an unhealed corneal ulcer following corneal transplant resulting in high myopic astigmatism was at risk for blindness, stereoscopic depth perception and loss of balance. This required one regular and one custom contact lens for correction.~~

~~One beneficiary with keratoconus was at risk for complete vision loss in one eye requiring corneal transplant.~~

~~CPAP Battery—One beneficiary with Ehlers-Danlos syndrome with severe tracheomalacia required CPAP therapy anytime symptoms arose was at risk for intractable coughing, airway collapse, and hypoxia/syncope.~~

~~Dental Implants—Replacement of an existing dental implant for a beneficiary with an immune deficiency and a history of intestinal problems (including resection of the small bowel, ileostomy, and Hartmann's pouch) who received dentures to masticate food for~~

INTERPRETIVE MEMO

Medicaid Covered Services Rule
Interpretation

Medicaid Covered Services Procedure
Interpretation

This interpretive memo remains effective statewide until it is specifically superseded—either by a subsequent interpretive memo or by a contradictory rule with a later date.

Reference 7104 Date of this Memo 10/1/2014 Page 4 of 13

This Memo: is New Replaces one dated 4/1/2014

~~proper nutrition. The approved dentures were affixed to implants that the beneficiary had on both sides, due to the lack of an alveolar ridge.~~

~~One child was underweight, congenitally missing 13 teeth, had years of orthodontic treatment to correct congenital problem, had no success with a variety of removable dental devices, was unable to eat and chew with removable devices, and had a chewing surface that was limited to one side of the mouth. Without dental implants, the child was unable to utilize multiple orthodontic procedures to correct congenital absence of teeth and would have a lifelong problem with chewing, the ability to eat appropriate foods, and the ability to maintain a healthy weight.~~

~~One beneficiary previously approved for dentures had limited gingival bone to hold current dentures in place, difficulty chewing and swallowing food, history of choking episodes, was at high risk of choking, aspiration pneumonia, hypoxia, malnutrition, hospitalization, and death.~~

~~Dental Bridge—One beneficiary with a brain injury needed a dental bridge to chew food properly as he has limited ability to cut his food due to reduced functioning from the brain injury.~~

~~Dentures—One beneficiary with quadriplegia used teeth for grasping objects in order to perform basic activities of daily living; had chronic stress on the temporomandibular joint because of reduced vertical dimension; was unable to eat adequately, speak adequately, digest food adequately; and was in constant pain from the dysfunctional TMJ. The combination of health conditions placed the beneficiary at a greater risk of aspiration and poor nutrition and compromised the ability to perform basic activities of daily living.~~

~~One beneficiary with a history of GERD (acid reflux disease), dysphasia (difficult and painful swallowing), a hiatus hernia, distal esophageal stricture and mild bulbo-duodenitis had already suffered food impaction due to esophageal dysfunction which put him at a greater risk for aspiration and poor nutrition; the combination of conditions could contribute to a catastrophic event.~~

~~One beneficiary had sleep apnea, diabetes, urinary incontinence, anxiety disorder, PTSD, obesity; had only one functioning kidney; had gastric bypass surgery and a colostomy; and therefore a greater risk of aspiration, poor nutrition and fluctuating blood sugar levels. The combination of health conditions may contribute to a catastrophic event from the underlying diabetes mellitus, which had already been responsible for multiple complications such as gastric paresis, renal disease and coronary artery disease.~~

~~One beneficiary with significant mental retardation consumed foods requiring chewing without realizing they needed to be chewed well. This resulted in severe choking which~~

INTERPRETIVE MEMO

**Medicaid Covered Services Rule
Interpretation**

**Medicaid Covered Services Procedure
Interpretation**

This interpretive memo remains effective statewide until it is specifically superseded—either by a subsequent interpretive memo or by a contradictory rule with a later date.

Reference 7104 **Date of this Memo** 10/1/2014 **Page** 5 of 13

This Memo: is New Replaces one dated 4/1/2014

~~required the Heimlich maneuver. The beneficiary was in danger of further aspiration and possibly hospitalization.~~

~~One beneficiary had a combination of two aortic valve replacements and hepatitis C with interferon which put him at risk for bacterial endocarditis (infection of the heart's valves or inner lining);~~

~~One beneficiary had GERD (gastroesophageal reflux disease), squamous cell carcinoma of the tongue with excision, and COPD (chronic obstructive pulmonary disease). The combination of these conditions was affecting the beneficiary's ability to masticate and swallow food. The beneficiary was at risk of aspiration, given the surgical procedure endured on the tongue and mouth, as well as for infections, given her diminished immune system status;~~

~~One beneficiary had laryngeal cancer and a history of extensive head and neck radiation. The radiation has caused changes in the tissues of the mouth and gums;~~

~~One beneficiary had significant heart and viral liver disease that compromised the immune system risking infection and cardiac deterioration;~~

~~One beneficiary with tracheal aspiration with nectar thickness, forceful cough with incomplete clearing, delayed swallowing, limited laryngeal elevation and poor esophageal stripping wave;~~

~~One beneficiary had cirrhosis of the liver and decreased serum albumin level, pulmonary fibrosis, recurrent infections, compromised immune system and borderline malnutrition with an albumin level of 2.6;~~

~~One beneficiary had a constellation of conditions including mental retardation and esophageal stricture; which has resulted in food impactions requiring endoscopic removal twice in the emergency room;~~

~~One beneficiary had mental retardation, mental illness, and expressive and pervasive developmental disorder who is deaf and does not speak was at risk for episodes of choking and as a result was refusing to eat;~~

~~One beneficiary with a history of Cerebral Palsy and Muscular Dystrophy had a feeding tube secondary to stomach surgery for ulcer disease with resultant small stomach and documented weight loss;~~

~~One beneficiary with diabetes and lung cancer had an aortic valve replacement and required dentures to reduce the risk for systemic infection;~~

INTERPRETIVE MEMO

Medicaid Covered Services Rule
Interpretation

Medicaid Covered Services Procedure
Interpretation

This interpretive memo remains effective statewide until it is specifically superseded—either by a subsequent interpretive memo or by a contradictory rule with a later date.

Reference 7104 Date of this Memo 10/1/2014 Page 6 of 13

This Memo: is New Replaces one dated 4/1/2014

~~One beneficiary with an immune deficiency and a history of intestinal problems (including resection of the small bowel, ileostomy, and Hartmann's pouch) needed dentures to masticate food for proper nutrition;~~

~~One beneficiary suffered from hepatic failure for which she is on a transplant list, and had encephalitis, malnutrition and a compromised immune system; Three beneficiaries suffering from mitral valve disorders were at risk for systemic infection, hospitalization, and cardiac deterioration;~~

~~One beneficiary suffered from brachial plexopathy resulting in causalgia, recent pneumonia, depression, fibromyalgia, several infected teeth and weight loss of 50 pounds in six months, which was 30 percent of her body weight;~~

~~One beneficiary with poorly controlled diabetes and advanced dental disease was at risk for choking and a compromised immune system;~~

~~One beneficiary with moderate oral/mild pharyngeal dysphasia suffered repeated choking episodes and had an increased risk of endotracheal aspiration/airway obstruction;~~

~~One beneficiary who had immuno-compromised pulmonary disease was at risk for infection, blocked airway and bacterial endocarditis that jeopardized cardiac status increasing risk for hospitalization or death;~~

~~One beneficiary with squamous cell carcinoma of the tongue required dentures to swallow, reduce choking, chew food and maintain nutrition during treatment course;~~

~~One beneficiary suffered from Stage D, Class IV, Ischemic Dilated Cardiomyopathy requiring dentures to maintain nutrition to prevent congestive heart failure and infection in anticipation of a heart transplant;~~

~~One beneficiary with achalasia, weight loss, dysphasia, esophageal stricture with repeated dilations was at risk for malnutrition and choking without dentures;~~

~~One beneficiary suffering from open mouth wounds was unable to eat causing severe weight loss, increasing risk for infection and further weight loss;~~

~~One beneficiary suffering from Type II diabetes, recurrent Bell's Palsy with severe permanent left sided facial droop/weakness required dentures to help with chewing and swallowing ability;~~

~~One beneficiary with reflux disorder failed conservative treatment requiring esophageal valve surgery and was at risk for decreased food passage and significant weight loss;~~

INTERPRETIVE MEMO

Medicaid Covered Services Rule
Interpretation

Medicaid Covered Services Procedure
Interpretation

This interpretive memo remains effective statewide until it is specifically superseded—either by a subsequent interpretive memo or by a contradictory rule with a later date.

Reference 7104 Date of this Memo 10/1/2014 Page 7 of 13

This Memo: is New Replaces one dated 4/1/2014

~~One beneficiary suffering from traumatic brain injury with limited mobility was at risk for continued choking episodes; One beneficiary who suffered a stroke, and had quadriplegia and esophageal dysmobility, required good dentition for swallowing ability and good nutrition;~~

~~One beneficiary with severe temporomandibular joint disease, reflux disorder, multiple sclerosis with no posterior oclusion, malnutrition, and weight loss was at risk for aspirating on food, continued weight loss, muscle weakness and continued malnutrition;~~

~~One beneficiary with diabetes and renal failure was on dialysis awaiting a transplant, and was immuno-compromised and at risk for bacteremia and possible systemic infection.~~

~~One beneficiary with seizure disorder, ulcerative colitis, chronic abdominal pain, malnutrition, vitamin B12 deficiency, and inability to maintain proper weight after exhausting all conservative measures was at risk for malnutrition, exacerbation of ulcerative colitis, and seizures.~~

~~One beneficiary of significantly advanced age with dementia, osteoporosis, and the inability to eat and speak clearly along with the sudden loss of dentures was at risk for the inability to adjust to an alternative diet, sudden deterioration, malnutrition, and rapid decompensation leading to placement to higher level of care and emergency medical admission for weakness and dehydration.~~

~~One beneficiary with a history of facial trauma, chronic left side temporal pain, maxillary cyst, TMJ bilateral synovitis and dislocation, joint arthrosis, and recidivism of TMJ dysfunction was at risk for continued recidivism of TMJ dysfunction and associated headaches and facial pain, chronic pain, worsening joint arthrosis, digestive dysfunction, and a fostered dependence on narcotic pain medication and physical therapy.~~

~~One beneficiary post renal transplant secondary to ESRD related to diabetic nephropathy and on immunosuppression medications was at risk for oral ulcers, infection, and poor diabetes control which could place their life in jeopardy.~~

~~One beneficiary with diabetes, compromised nutritional status, disabling arthritis, joint deformity, and recovering from brain surgery for cancer followed by treatment with radiation and chemotherapy was at risk for continued weight loss, decreased response to chemotherapy and radiation, and infection of the gums leading to more serious infection due to being immunocompromised.~~

~~One beneficiary had cerebrovascular accident (CVA), dysphagia secondary to CVA, and a history of aspiration pneumonia due to inhalation of food or vomitus. Without dentures, the beneficiary was at risk for repeat aspiration pneumonia leading to hospital admission and treatment with IV antibiotics.~~

INTERPRETIVE MEMO

Medicaid Covered Services Rule
Interpretation

Medicaid Covered Services Procedure
Interpretation

This interpretive memo remains effective statewide until it is specifically superseded—either by a subsequent interpretive memo or by a contradictory rule with a later date.

Reference 7104 Date of this Memo 10/1/2014 Page 8 of 13

This Memo: is New Replaces one dated 4/1/2014

~~One beneficiary with hiatal hernia, oropharyngeal dysphagia, GERD, esophageal stricture, and a history of choking and regurgitation of large boluses. Without dentures, the beneficiary was at risk for severe episodes of choking resulting in occlusion of the airway requiring an emergency Heimlich maneuver, café coronary with upper esophageal/oropharyngeal food bolus causing choking and collapse, Barrett's esophagus, and tumor.~~

~~One beneficiary with poorly controlled Type 1 diabetes, high glycoated hemoglobin, low BMI, and frequent ulcers of the gums resulting in infection was at risk for osteomyelitis of the jaw, systemic infection sepsis, and atherosclerosis without proper dentition and the ability to adequately control blood sugar with diet.~~

~~One beneficiary with mouth sores, difficulties with speech, and very low BMI was at risk for serious bodily organ dysfunction due to malnutrition.~~

~~One beneficiary with dental abscesses, macrocytosis, hypothyroidism, hypertension, COPD, hyperlipidemia, osteoarthritis, coronary atherosclerosis, and needed a total knee replacement, was at risk for persistent oral infections leading to infected prosthesis resulting in prolonged hospitalization.~~

~~One beneficiary with severe rheumatoid arthritis, severe arthritis of the cervical spine, chronic torticollis, compromised ability to chew and swallow, was wheelchair bound, and had limited use of hands to prepare food was at risk for choking.~~

~~One beneficiary with many serious medical conditions including breast cancer, Barrett's esophagus, chronic lymphocytic leukemia, thyroid disease, diabetes, and TMJ was at risk for infection and malnutrition without dentures.~~

~~One beneficiary with many serious medical conditions including diabetes, fibromyalgia, Lyme disease, anxiety, depression, and chronic PTSD triggered by dental pain was at risk for increased dental infections and increased mental anguish.~~

~~One beneficiary with significant tooth deterioration, severe diabetes, and dysphagia due to advanced Parkinson's disease was at risk for choking.~~

~~One beneficiary with Parkinson's disease and a history of dysphagia was at a significantly increased risk for choking, aspiration, and pneumonia.~~

~~One beneficiary who experienced rapid weight loss, reduction in BMI, and increased symptoms of severe anxiety/depression.~~

~~One beneficiary with an oral nasal fistula from a cleft palate needed a top denture to stop food and debris from entering his nasal passages in order to prevent chronic infections.~~

~~Denture Relines—One beneficiary with end stage liver disease, cirrhosis and ascites was awaiting a liver transplant and at risk for spontaneous bacterial peritonitis risking his chance for successful transplantation.~~

INTERPRETIVE MEMO

Medicaid Covered Services Rule
Interpretation

Medicaid Covered Services Procedure
Interpretation

This interpretive memo remains effective statewide until it is specifically superseded—either by a subsequent interpretive memo or by a contradictory rule with a later date.

Reference 7104 Date of this Memo 10/1/2014 Page 9 of 13

This Memo: is New Replaces one dated 4/1/2014

~~Disposable Wipes—One elderly beneficiary living at home with congestive heart disease, Alzheimer's, incontinence, hemorrhoids, pressure sores on buttocks and rectal prolapse unable to be surgically corrected, was at risk for infection and placement in a nursing home.~~

~~Eye glasses—One beneficiary had limited nearsightedness remaining in only one eye, limiting vision to 20 feet and severely impacting daily functioning;~~

~~One beneficiary with pseudopapilledema, mild retardation, diabetes, and obesity was at risk for diminished functioning;~~

~~One beneficiary with a tumor in the right medial rectus required excision resulting in visual changes, decreased visual acuity, pain, double vision, eyestrain, bilateral weakness and chronic tearing;~~

~~One beneficiary at the far end of the effects of macular degeneration was blind without correction and unable to care for self and family;~~

~~One beneficiary had early posterior subcapsular cataracts that with correction prevented surgery;~~

~~One beneficiary suffered from recurrent corneal abrasions due to trichiasis with significant photosensitivity and without correction was entirely unable to see;~~

~~One beneficiary had bilateral aphakia, diabetic retinopathy, and severe vitreous hemorrhage status post vitrectomy; One beneficiary with multiple health and ambulatory problems was taking the drug coumadin and was at risk for bleeding after falling if unable to see clearly.~~

~~One beneficiary with significant vision loss without corrected vision was at risk for the loss of independent living and loss of safe mobility.~~

~~Fluoride Trays—One beneficiary had oral cancer and was going to start radiation treatment on the right side of the mouth, which eliminates saliva production on that side of the mouth. Xerostomia (dry mouth) from lack of saliva creates an environment that promotes tooth decay and increases the risk of gum disease and chronic open wounds in the mouth if not treated daily with fluoride solution.~~

~~FM System—One beneficiary with pseudomonas meningitis and lymphocytic leukemia requiring chemotherapy suffered a medullary stroke causing left sided paralysis, and was at risk for profound communication deficits leading to developmental delay.~~

INTERPRETIVE MEMO

Medicaid Covered Services Rule
Interpretation

Medicaid Covered Services Procedure
Interpretation

This interpretive memo remains effective statewide until it is specifically superseded—either by a subsequent interpretive memo or by a contradictory rule with a later date.

Reference 7104 Date of this Memo 10/1/2014 Page 10 of 13

This Memo: is New Replaces one dated 4/1/2014

~~Gastric Electrical Stimulator—One beneficiary had type I diabetes, diabetic gastroparesis, and related frequent episodes of diabetic ketoacidosis. Beneficiary had been resistant to promotility agents, anti-nausea medication, as well as botulinum toxin injections. Beneficiary had multiple hospital and emergency department visits for dehydration, nausea, and vomiting. Beneficiary was at risk for worsening of digestion (gastroparesis) with continued dehydration, vomiting, nausea, and further episodes of diabetic ketoacidosis which could lead to severe illness or death.~~

~~Genetic Testing Report—One patient suffered from a rare neuromuscular disease making it essential to have this diagnostic tool to diagnose/treat the condition accurately.~~

~~Gingivectomy—A beneficiary with two failed organ transplants needed to be infection-free for a third transplant.~~

~~Home Cholesterol Test Kit—For a six-month trial period in compliance with other treatment for one beneficiary with hypercholesterolemia and failure of multiple drug trials was at risk for coronary artery disease, stroke, and heart attack.~~

~~Magnetoencephalography (MEG) Imaging—To pursue a surgical option for treatment of epilepsy for one beneficiary with significantly complicated epilepsy, disability from multiple seizures suffered on weekly basis, and a history of falls and trauma was at risk for progressive/repetitive cerebral anoxia, falls, trauma, and death.~~

~~*Lamb's Wool—One beneficiary suffered from repeated ulcerations between his toes and this was added to coverage, with prescription, for all others similarly situated who need it for padding and to wick moisture away from the skin.~~

~~Methadone Maintenance Treatment—Two beneficiaries found to be compliant with treatment received coverage at an out-of-state facility until the methadone program was established in Vermont.~~

~~Nutriceuticals—A beneficiary with heart and ambulatory problems needed nutriceuticals to assist in producing nitric oxide.~~

~~Oral Reconstruction—One beneficiary with substantial bone loss in the upper jaw required oral reconstruction to chew food.~~

~~Orthodontic Treatment—One beneficiary suffered from a health condition making it difficult to swallow without choking;~~

~~One beneficiary without occlusion had temporomandibular joint disease and orofacial pain requiring a lifelong intraoral appliance to prevent the jaw from locking, and was at risk for irreversible degenerative changes and surgical intervention.~~

~~Partial Dentures and a Palatal Lift—One beneficiary suffered from tongue atrophy and was at risk for aspirating on food;~~

INTERPRETIVE MEMO

Medicaid Covered Services Rule
Interpretation

Medicaid Covered Services Procedure
Interpretation

This interpretive memo remains effective statewide until it is specifically superseded—either by a subsequent interpretive memo or by a contradictory rule with a later date.

Reference 7104 Date of this Memo 10/1/2014 Page 11 of 13

This Memo: is New Replaces one dated 4/1/2014

~~One beneficiary with a hole in the roof of his mouth after repair of a congenital cleft palate was unable to chew food properly, thus increasing the risk of aspirating on food;~~

~~One beneficiary had a history of kidney transplant and diabetes with recurring gum infections with considerable risk for systemic infection due to immune-compromised health condition;~~

~~One beneficiary suffered from severe dystonia affecting the ability to control mouth, speech, food intake and good dentition;~~

~~One beneficiary with pancreatitis and who sustained severe injury to the mandible was without occlusion, causing an inability to eat, weight loss and poor nutrition;~~

~~One beneficiary underwent a gastric bypass resulting in a smaller stomach and suffered from diabetes and morbid obesity, requiring partial dentures to chew food to prevent vomiting and compromising the surgical intervention.~~

~~One beneficiary with severe periodontal disease, diabetes, history of stroke, GERD, Barrett's esophagus, hiatal hernia, coronary artery disease with five heart stints, right knee replacement, and breast cancer was at risk for obstruction and hematogenous infection requiring long hospitalization.~~

~~One beneficiary with mouth ulcers, all maxillary teeth removed, and almost all lower teeth intact which were cutting into the upper gums. Without upper dentures, the beneficiary was at risk for continued trauma to upper gums causing bleeding, infections, and bone loss making it impossible for them to ever receive dentures.~~

~~One beneficiary with maxillary teeth removed, experienced significant weight loss, reduction in BMI, and increased symptoms of depression. Without upper dentures, the beneficiary was at risk for continued weight loss, unhealthy (underweight) BMI, and increased mental health concerns.~~

~~One beneficiary with thrush, cancer of the nasal floor and hard palate, and major surgical resection which significantly impacted speech and swallowing. Without an upper denture prosthesis the beneficiary was at risk for infection, significant weight loss, and would have an inadequate seal of the connection between the nose and mouth causing abnormal speech and swallowing.~~

~~One beneficiary with rampant dental caries, periodontal disease, chronic odontogenic pain, and uncontrolled Type II diabetes was at risk for chronic inflammatory periodontal disease, heart disease, pulmonary infections, gastric ulcers, and continued complications of uncontrolled diabetes.~~

INTERPRETIVE MEMO

Medicaid Covered Services Rule
Interpretation

Medicaid Covered Services Procedure
Interpretation

This interpretive memo remains effective statewide until it is specifically superseded—either by a subsequent interpretive memo or by a contradictory rule with a later date.

Reference 7104 Date of this Memo 10/1/2014 Page 12 of 13

This Memo: is New Replaces one dated 4/1/2014

~~One beneficiary with over closure of the mandible, loss of vertical dimension of closure, muscles of mastication in spasm, and severe pain and headaches was at risk for further deterioration of the TMJ and constant severe pain without lower dentures.~~

~~One beneficiary with Barrett's Esophagus, gastroesophageal reflux disease, hiatal hernia, and recurrent aspiration pneumonia; was at risk for aspiration and hospitalization.~~

~~One beneficiary with chronic temporal mandibular joint pain, loss of vertical dimension of closure, progressive osteoarthritic changes, severe pain and headaches, at risk of further deterioration of the TMJ and constant severe pain.~~

~~One beneficiary had diabetes and persistent, significant weight loss due to poor nutrition, compounded by infections in the lower anterior teeth. Partial dentures were needed to help maintain body weight, stabilize blood sugar levels, and treat chronic oral infections. This beneficiary also suffered from emotional and anxiety issues related to the above problems.~~

~~Periodontal Surgery—One beneficiary suffered gingival hyperplasia from taking drugs for a seizure disorder which increases pocket depths between teeth and gums, causes bleeding, and without periodontal surgery results in disfigurement, infection and tooth loss.~~

~~Prescription Drug Approval—Two beneficiaries needed a prescription drug where the manufacturer did not participate in the federal rebate program.~~

~~Prone Stander—One beneficiary had multiple congenital health conditions compromised by respiratory and orthopedic disorders;~~

~~One beneficiary with paraplegia, chronic urinary tract infections and skin colonized with Methycillin Resistant Staphylococcus Aureus (MRSA) bacteria was at risk for life-threatening infection without the ability to improve bladder and renal function through standing.~~

~~*Pull Up Diapers—These are approved for children with disabilities and daytime incontinence, age 6–21, who are accepted into a comprehensive continence training program.~~

~~REAL Time Continuous Glucose Monitoring System—A beneficiary with a total pancreatectomy, gastroparesis, chronic kidney disease, peripheral neuropathy, lack of digestive enzymes, and loss of the early warning signs to prevent and treat emergent low blood glucose, despite excellent compliance, diligence and knowledge about the disease process, was at risk for permanent brain injury or death.~~

~~One child with type I diabetes with widely fluctuating blood glucose levels (requiring frequent testing during the day and overnight) and hypoglycemic unawareness was at risk for life threatening hypoglycemia and hyperglycemia, developing more severe hypoglycemic reactions with less warning, ketonemia, unconsciousness, and emergency hospitalization.~~

INTERPRETIVE MEMO

Medicaid Covered Services Rule
Interpretation

Medicaid Covered Services Procedure
Interpretation

This interpretive memo remains effective statewide until it is specifically superseded—either by a subsequent interpretive memo or by a contradictory rule with a later date.

Reference 7104 Date of this Memo 10/1/2014 Page 13 of 13

This Memo: is New Replaces one dated 4/1/2014

~~One beneficiary with type 1 diabetes, frequent daily hypoglycemic episodes, and diabetic neuropathy which prevented the perception of hypoglycemia was at risk for hypoglycemia unawareness, severe hypoglycemia resulting in unconsciousness, falls, injuries, loss of brain function, coma, and possibly death.~~

~~SPES—A beneficiary with a recurring tumor refused all forms of treatment other than this naturopathic herbal preparation for prostate cancer.~~

~~*Special Needs Infant Feeder Bottles—One infant beneficiary with feeding and swallowing disorders was at risk of malnutrition, failure to thrive, aspiration, respiratory infections, and possibly death without nutrition delivered by the proper feeding system.~~

~~*Specialized car seats—Three children with severe head, neck, and truncal instabilities made it unsafe to use traditional car seats.~~

~~Sucraid—One beneficiary with sucrose isomaltase and without medication could not absorb sugars which causes pain, was at risk for malnutrition.~~

~~Toothette Oral Swabs—One child with neuromuscular disease, recurrent fungal mouth ulcers, inability to take liquids orally, inability to swish and rinse mouth, and failed trials of several topical antifungals and oral antifungals was at risk for choking, recurrent fungal mouth ulcers, the need for systemic antifungals, bleeding, mucosal damage, and infection which could spread to deeper structures.~~

~~*UVB Light Box—This was approved for a beneficiary with a history of severe skin disorder as a less costly alternative to frequent treatments.~~

~~UVB Light Box—This was approved for a beneficiary with a history of depression, anxiety and suicidality symptoms that were stabilized with the phototherapy. Use of this device resulted in a marked decrease in accessing emergency services and a decrease in dependency on benzodiazepines, including an eventual remission of symptoms.~~

 Medicaid Coverage of Exception Requests

 #4.105 7104 Requesting Coverage Exceptions Medicaid Coverage of Exception Requests
 (04/01/1999, 98-11F)

#4.105.1 General Provisions

(A) ~~Any~~ beneficiaries who are 21 years old and older may request coverage of a service Medicaid beneficiary may request that the department cover a service or item that Vermont Medicaid is not already included on a list of has not already determined to be a covered service. The request should be made ~~using the~~ Medicaid Coverage Exception Request process described by this rule.

1. For beneficiaries who are under 21 years old who request coverage of a service that has not already been determined to be covered, Vermont Medicaid will process the request pursuant to the requirements of HCAR 4.106, Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services.

(B) Filing an Exception Request; Decision on Exception Request

1. ~~covered services and items. The A~~ beneficiary may file an exception request by sending the request ~~request and supporting medical documentation should be sent to the Director of the~~ Vermont Medicaid, Office of Vermont Health Access (OVHA). The director
2. Vermont Medicaid will review the request and supporting documentation and will make a good faith effort to timely obtain any additional information necessary to determine whether to approve or deny the exception request.
- 1.3. ~~quickly to allow the~~ The Commissioner of the Department of Vermont Health Access (DVHA) or their designee will make a good faith effort to ~~make a decision~~ decide, within thirty days of receipt of the request, to approve or deny the request. ~~within thirty days. In no case will a request for a service or item be approved for coverage unless it is medically necessary.~~

#4.105.2 Criteria

(A) The request must be for a beneficiary who is 21 years old or older, and the service must:

1. Fit within a category or subcategory of services described at 42 U.S.C. 1396d(a),
2. Be medically necessary pursuant to HCAR 4.101.1(c),
3. Be necessary due to extenuating circumstances that are unique to the beneficiary such that there would be serious detrimental health consequences if the service was not provided, and
4. Have not been reviewed and denied approval by the Federal Drug Administration (FDA), ~~if the service is subject to Federal Drug Administration (FDA) FDA approval, the FDA has not reviewed the service and denied its approval.~~

(B) If the requirements of 4.105.2(A) are met, the Commissioner of DVHA or their designee will consider the following additional criteria, in combination, ~~with the above criteria~~ in determining whether to approve or deny coverage of the service:-

If, under this section, an individual requests that a service or item be covered, the following criteria will be considered, in combination, in determining whether to cover the service or item for the individual and/or to add it to a list of pre-approved services or items, with the following exception. If the service or item is subject to FDA approval and has not been approved (criterion (D) below), the request for coverage of the service or item will be denied.

Formatted: Highlight

Medicaid Coverage of Exception Requests

1. The service has not been identified in administrative rule or statute as a non-covered service, or, if the service has been identified as non-covered and a reason for its non-coverage includes its lack of efficacy, then there has been credible and material new evidence about the efficacy of the service since it was identified as non-covered.
2. The service fits within a category or subcategory of services described at 42 U.S.C. 1396d(a) that is offered by Vermont Medicaid for adults.
3. The service is consistent with the objective of the Medicaid Act (Title XIX of the Social Security Act), to provide medical assistance to eligible individuals.
4. Denial of the service would be arbitrary. Vermont Medicaid may not deny coverage for a service solely based on its cost.
5. The service is not experimental or investigational.
6. The medical appropriateness and efficacy of the service has been demonstrated in credible scientific evidence published in peer-reviewed literature or by medical experts in the relevant clinical field.
7. Less expensive, medically appropriate alternatives are not available, or have been trialed and failed, or are contraindicated for the beneficiary.
8. The service is primarily and customarily used to serve a medical purpose, and it is generally not useful to an individual in the absence of an illness, injury, or disability. Are there extenuating circumstances that are unique to the beneficiary such that there would be serious detrimental health consequences if the service or item were is not provided?

Formatted: Highlight

Formatted: Highlight

Does the service or item fit within a category or subcategory of services offered by the Vermont Medicaid program for adults?

Has the service or item been identified in rule as not covered, and has new evidence about efficacy been presented or discovered?

Is the service or item consistent with the objectives of Title XIX?

9. If the request is for a brand-name prescription drug that is not covered ~~the of drugs~~ because the drug manufacturer does not participate in the Federal Drug Rebate Program, then coverage of this drug must be needed because the currently covered drug has not been effective in treating the beneficiary's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the beneficiary.

~~has?~~ Is there a rational basis for excluding coverage of the service or item? The purpose of this criterion is to ensure that the department does not arbitrarily deny coverage for a service or item. The department may not deny an individual coverage for a service or item solely based on its cost.

Formatted: Not Highlight

Is the service or item experimental or investigational?

~~for Medicaid~~ Have the medical appropriateness and efficacy of the service or item been demonstrated in the literature or by experts in the field?

1. Are less expensive, medically appropriate alternatives not covered or not generally available?

Is FDA approval required, and if so, has the service or item been approved?

2. Is the service or item primarily and customarily used to serve a medical purpose, and is it generally not useful to an individual in the absence of an illness, injury, or disability?

 Medicaid Coverage of Exception Requests

#4.105.3 Outcomes

(A) Each decision shall result in one of four 4 outcomes. The four 4 possible outcomes are:

(A) ~~(1) The Commissioner or their designee will approve or deny coverage of the service or item for the individual-beneficiary.~~

(B) ~~For approvals and denials in the exception request process, the Commissioner or their designee and adds it to a list of pre-approved services or items will determine whether to pursue administrative processes (e.g., state plan amendment, administrative rule) that are necessary to cover the service by Vermont Medicaid.~~

1. ~~(2) The Commissioner approves coverage of the service or item for the individual and does not add it to a list of pre-approved services or items.~~
2. ~~(3) The Commissioner does not approve coverage of the service or item for the individual and adds it to a list of pre-approved services or items, or~~
3. ~~(4) The Commissioner does not approve coverage of the service or item for the individual and does not add it to a list of pre-approved services or items.~~

If the Commissioner's decision is to add the service or item to a pre-approved list of covered services, an Interpretive Memo will be issued delineating the addition. All such Interpretive Memos will be incorporated into the rule as soon as practical.

#4.105.4 Approvals

~~(A) Annually, The Office of Vermont Health Access DVHA Vermont Medicaid shall will, semiannually, issue/publish on the DVHA website a report document updating the listing of all affirmative the approved coverage decisions -made under the this-exception request procedure-process that do not result in the service or item that is authorized-being-added to a list of pre-approved-being considered for pursuit of coverage by Vermont Medicaid, as described at -services-or-items4.105.3(B).~~

~~(A)(B) This list shall include the Commissioner's coverage decisions, plus negotiated settlements and Human Services Board and Vermont Supreme Court decisions. Because this list shall be available for public inspection, it shall be composed in a manner that protects beneficiaries' right to confidentiality. The Vermont DVHA Vermont Medicaid will ensure that all Medicaid beneficiaries who are similarly situated to the individual who has obtained coverage pursuant to the exceptions request process are will be-treated similarly with respect to coverage of the same service-or-item.~~

#4.105.5 Adverse Decisions

~~(A) An adverse decision from Vermont Medicaid will inform a beneficiary who receives an adverse decision of their right to appeal -Commissioner may be appealed through the State fair hearing process.~~

~~(B) A reviewing authority may not reverse the Commissioner's or their designee's decision unless it determines that the decision was an abuse of discretion.~~

~~(A)(C) A request for a service for which there has been an adverse decision may not be renewed by renewed~~

Medicaid Coverage of Exception Requests

by the same beneficiary until twelve months have elapsed since the previous final decision or until one of the following has been demonstrated:

1. ~~N~~ew documentation of the individual's condition that was not available at the time of the prior request.
2. ~~a~~A material change in the individual's condition,
~~N~~ew and material medical evidence, or
- 3.
4. ~~a~~A material change in technology has been demonstrated.

~~The Office of Vermont Health Access shall, semiannually, issue an Interpretive Memo updating the listing of all affirmative coverage decisions made under this procedure that do not result in the service or item that is authorized being added to a list of pre-approved services or items. This list shall include the commissioner's coverage decisions, plus negotiated settlements and Human Services Board and Vermont Supreme Court decisions. Because this list shall be available for public inspection, it shall be composed in a manner that protects beneficiaries right to confidentiality. The department will ensure that all Medicaid beneficiaries who are similarly situated to the individual who has obtained coverage will be treated similarly with respect to coverage of the same service or item.~~

~~If, under this section, an individual requests that a service or item be covered, the following criteria will be considered, in combination, in determining whether to cover the service or item for the individual and/or to add it to a list of pre-approved services or items, with the following exception. If the service or item is subject to FDA approval and has not been approved (criterion (I) below), the request for coverage of the service or item will be denied.~~

- ~~(A) Are there extenuating circumstances that are unique to the beneficiary such that there would be serious detrimental health consequences if the service or item were not provided?~~
- ~~(B) Does the service or item fit within a category or subcategory of services offered by the Vermont Medicaid program for adults?~~
- ~~(C) Has the service or item been identified in rule as not covered, and has new evidence about efficacy been presented or discovered?~~
- ~~(D) Is the service or item consistent with the objectives of Title XIX?~~
- ~~(E) Is there a rational basis for excluding coverage of the service or item? The purpose of this criterion is to ensure that the department does not arbitrarily deny coverage for a service or item. The department may not deny an individual coverage for a service or item solely based on its cost.~~

Medicaid Coverage Exception Requests

4.105 Medicaid Coverage of Exception Requests

4.105.1 General

(A) Beneficiaries who are 21 years old and older may request coverage of a service that Vermont Medicaid has not already determined to be a covered service. The request should be made using the Medicaid Coverage Exception Request process described by this rule.

1. For beneficiaries who are under 21 years old who request coverage of a service that has not already been determined to be covered, Vermont Medicaid will process the request pursuant to the requirements of HCAR 4.106, Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services.

(B) Filing an Exception Request; Decision on Exception Request

1. A beneficiary may file an exception request by sending the request and supporting medical documentation to Vermont Medicaid.
2. Vermont Medicaid will make a good faith effort to timely obtain any additional information necessary to determine whether to approve or deny the exception request.
3. The Commissioner of the Department of Vermont Health Access (DVHA) or their designee will make a good faith effort to decide, within thirty days of receipt of the request, to approve or deny the request.

4.105.2 Criteria

(A) The request must be for a beneficiary who is 21 years old or older, and the service must:

1. Fit within a category or subcategory of services described at 42 U.S.C. 1396d(a),
2. Be medically necessary pursuant to HCAR 4.101.1(c),
3. Be necessary due to extenuating circumstances that are unique to the beneficiary such that there would be serious detrimental health consequences if the service was not provided, and
4. Have not been reviewed and denied approval by the Federal Drug Administration (FDA), if the service is subject to FDA approval.

(B) If the requirements of 4.105.2(A) are met, the Commissioner of DVHA or their designee will consider the following additional criteria, in combination, in determining whether to approve or deny coverage of the service:

1. The service has not been identified in administrative rule or statute as a non-covered service, or, if the service has been identified as non-covered and a reason for its non-coverage includes its lack of efficacy, then there has been credible and material new evidence about the efficacy of the service since it was identified as non-covered.
2. The service fits within a category or subcategory of services described at 42 U.S.C. 1396d(a) that is offered by Vermont Medicaid for adults,
3. The service is consistent with the objective of the Medicaid Act (Title XIX of the Social Security Act), to provide medical assistance to eligible individuals.
4. Denial of the service would be arbitrary. Vermont Medicaid may not deny coverage for a service solely based on its cost.
5. The service is not experimental or investigational.
6. The medical appropriateness and efficacy of the service has been demonstrated in credible scientific evidence published in peer-reviewed literature or by medical experts in the relevant clinical field.
7. Less expensive, medically appropriate alternatives are not available, or have been trialed and failed,

Medicaid Coverage Exception Requests

or are contraindicated for the beneficiary.

8. The service is primarily and customarily used to serve a medical purpose, and it is generally not useful to an individual in the absence of an illness, injury, or disability.
9. If the request is for a brand-name prescription drug that is not covered because the drug manufacturer does not participate in the Federal Drug Rebate Program, then coverage of this drug must be needed because the currently covered drug has not been effective in treating the beneficiary's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the beneficiary.

4.105.3 Outcomes

- (A) The Commissioner or their designee will approve or deny coverage of the service for the beneficiary.
- (B) For approvals and denials in the exception request process, the Commissioner or their designee will determine whether to pursue administrative processes (e.g., state plan amendment, administrative rule) that are necessary to cover the service by Vermont Medicaid.

4.105.4 Approvals

- (A) Annually, Vermont Medicaid will publish on the DVHA website a document updating the list of the approved coverage decisions made under the exception request process that do not result in the service being considered for pursuit of coverage by Vermont Medicaid, as described at 4.105.3(B).
- (B) Vermont Medicaid will ensure that all Medicaid beneficiaries who are similarly situated to the individual who has obtained coverage pursuant to the exceptions request process are treated similarly with respect to coverage of the same service.

4.105.5 Adverse Decisions

- (A) Vermont Medicaid will inform a beneficiary who receives an adverse decision of their right to appeal through the State fair hearing process.
- (B) A reviewing authority may not reverse the Commissioner's or their designee's decision unless it determines that the decision was an abuse of discretion.
- (C) A request for a service for which there has been an adverse decision may not be renewed by the same beneficiary until twelve months have elapsed since the previous final decision or until one of the following has been demonstrated:
 1. New documentation of the individual's condition that was not available at the time of the prior request,
 2. A material change in the individual's condition,
 3. New and material medical evidence, or
 4. A material change in technology has been demonstrated.

VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

The Vermont Statutes Online have been updated to include the actions of the 2023 session of the General Assembly.

NOTE: The Vermont Statutes Online is an unofficial copy of the Vermont Statutes Annotated that is provided as a convenience.

Title 3: Executive

Chapter 25: Administrative Procedure

Subchapter 1: General Provisions

- § 800. Purpose
- § 801. Short title and definitions
- §§ 802-805. Repealed. 1981, No. 82, § 7(1).
- § 803. Repealed. 1981, No. 82, § 7(2).
- § 804. Repealed. 1981, No. 82, § 7(3).
- § 805. Repealed. 1981, No. 82, § 7(4).
- § 806. Procedure to request adoption of rules or procedures; guidance documents
- § 807. Declaratory judgment on validity or applicability of rules
- § 808. Procedure to request declaratory rulings by agencies

Subchapter 2: Contested Cases

- § 809. Contested cases; notice; hearing; records
- § 809a. Enforcement of subpoenas; compulsion of testimony
- § 809b. Modification of subpoena or discovery order
- § 810. Rules of Evidence; official notice
- § 811. Examination of evidence by agency
- § 812. Decisions and orders
- § 813. Ex parte consultations
- § 814. Licenses
- § 815. Judicial review of contested cases
- § 816. Exemptions

Subchapter 3: Rulemaking; Procedures; Guidance Documents

- § 817. Legislative Committee on Administrative Rules
- § 818. Secretary of State; centralized rule system
- § 819. Repealed. 1981, No. 82, § 7(6).
- § 820. Interagency Committee on Administrative Rules
- §§ 821-830. [Reserved.]
- § 831. Required policy statements and rules
- § 832. Exemptions; limitations
- §§ 832a, 832b. Repealed. 2017, No. 156 (Adj. Sess.), § 2.
- § 833. Style of rules
- § 834. Periodic review of rules and forms
- § 835. Procedures and guidance documents
- § 836. Procedure for adoption of rules
- § 837. Prefiling
- § 838. Filing of proposed rules
- § 839. Publication of proposed rules
- § 840. Public hearing and comment
- § 841. Final proposal
- § 842. Review by Legislative Committee
- § 843. Filing of adopted rules
- § 844. Emergency rules
- § 845. Effect of rules
- § 846. Remedies for procedural failures
- § 847. Availability of adopted rules; rules by Secretary of State
- § 848. Rules repeal; amendment of authority; notice by agency
- § 849. Repealed. 2017, No. 156 (Adj. Sess.), § 2.

Full Text of Chapter

VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

The Vermont Statutes Online have been updated to include the actions of the 2023 session of the General Assembly.

NOTE: The Vermont Statutes Online is an unofficial copy of the Vermont Statutes Annotated that is provided as a convenience.

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

A Service of the Office of the Secretary of State

- [Vermont.gov](#)
- [Feedback](#)
- [SOS Website](#)
- [APA Site](#)
- [Code of Vermont Rules](#)
- [Recent](#)
- [Search Rules](#)
- [Calendar](#)
- [Subscribe](#)
- [APA Contact Info](#)

Search Rules

Deadline For Public Comment

Deadline: Aug 16, 2023

The deadline for public comment has expired. Contact the agency or primary contact person listed below for assistance.

Rule Details

Rule Number:	23P021
Title:	Medicaid Coverage of Exception Requests.
Type:	Standard
Status:	Proposed
Agency:	Agency of Human Services
Legal Authority:	3 V.S.A. § 801(b)(11); 33 V.S.A. § 1901(a)(1)
Summary:	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.

Persons Affected:

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.

Economic Impact:

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.

Posting date:

Jun 28, 2023

Hearing Information

Hearing date: 08-09-2023 2:00 PM [ADD TO YOUR CALENDAR](#)

Location: Waterbury State Office Complex, Cherry A Conference Room

Address: 280 State Drive

City: Waterbury

State: VT

Zip: 05671

Hearing

Notes:

Hearing date: 08-09-2023 2:00 PM [ADD TO YOUR CALENDAR](#)

Location: Virtual Hearing via Microsoft Teams

Address: Meeting ID: 272 420 340 708 Passcode: DP3BZD

City: call in (audio only) +1 802-552-8456,,591587067#

State: VT

Zip: n/a

Hearing Link: <https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?urlhttps3>

Notes: [a547-964964d03e6c2522257d&data057C017CSOS.StatutoryFilings40vermo](https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?urlhttps3a547-964964d03e6c2522257d&data057C017CSOS.StatutoryFilings40vermo)

Contact Information

Information for Primary Contact

PRIMARY CONTACT PERSON - A PERSON WHO IS ABLE TO ANSWER QUESTIONS

Level: Primary
Name: Ashley Berliner
Agency: Agency of Human Services
Address: Waterbury State Office Complex, 280 State Drive
City: Waterbury
State: VT
Zip: 05671
Telephone: 8025789305
Fax: 802-241-0450
Email: linda.mclemore@vermont.gov

[SEND A COMMENT](#)

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

[VIEW WEBSITE](#)

Information for Secondary Contact

SECONDARY CONTACT PERSON - A SPECIFIC PERSON FROM WHOM COPIES MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT

Level: Secondary
Name: Linda Narrow McLemore
Agency: Agency of Human Services
Address: Waterbury State Office Complex, 280 State Drive
City: Waterbury
State: VT
Zip: 05671
Telephone: 802-779-3258
Fax: 802-241-0450
Email: linda.mclemore@vermont.gov

[SEND A COMMENT](#)

Keyword Information

Keywords:

- Exception Request
- Requesting Coverage Exception
- Medicaid
- Health Care Administrative Rules
- HCAR

Back

[Accessibility Policy](#) | [Privacy Policy](#)

A Vermont Government Website Copyright 2024 State of Vermont



v 1.0.2

OFFICE OF THE SECRETARY OF STATE
VERMONT STATE ARCHIVES & RECORDS ADMINISTRATION (VSARA)
(802) 828-2863

TO:	Seven Days Legals (legals@sevendaysvt.com) Kaitlin Montgomery(kaitlin@sevendaysvt.com)	Tel: (802) 865-1020 x110. Attn: Kaitlin Montgomery
	The Caledonian Record Julie Poutré (adv@caledonian-record.com)	Tel: 748-8121 FAX: 748-1613
	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
	The Valley News (advertising@vnews.com)	Tel: 603-298-8711 FAX: 603-298-0212
	The Addison Independent (legals@addisonindependent.com)	Tel: 388-4944 FAX: 388-3100 Attn: Display Advertising
	The Bennington Banner / Brattleboro Reformer Lylah Wright (lwright@reformer.com)	Tel: 254-2311 ext. 132 FAX: 447-2028 Attn: Lylah Wright
	The Chronicle (ads@bartonchronicle.com)	Tel: 525-3531 FAX: 525-3200
	Herald of Randolph (ads@ourherald.com)	Tel: 728-3232 FAX: 728-9275 Attn: Brandi Comette
	Newport Daily Express (jlafoe@newportvermontdailyexpress.com)	Tel: 334-6568 FAX: 334-6891 Attn: Jon Lafoe
	News & Citizen (mike@stowereporter.com) Irene Nuzzo (irene@newsandcitizen.com and ads@stowereporter.com removed from distribution list per Lisa Stearns.	Tel: 888-2212 FAX: 888-2173 Attn: Bryan
	St. Albans Messenger Legals (legals@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: January 23, 2024

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

July 6, 2023

PAGES INCLUDING THIS COVER MEMO:

4

***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).

Vermont Use of Public Waters Rules.

Vermont Proposed Rule: 23P017

AGENCY: Agency of Natural Resources

CONCISE SUMMARY: The proposed rule is an amendment to Section 3 and Appendix A of the Vermont Use of Public Waters Rules (UPW), Environmental Protection Rule Chapter 32. The rule proposes to regulate "wakesports" involving a "wakeboat" on certain lakes and ponds in Vermont. The rule would prohibit such wakesports on lakes, ponds, and reservoirs that do not have a minimum of 50 contiguous acres that are both 500 feet from shore on all sides and a minimum of 20 feet deep (eligibility rule). The rule would also limit such wakesports to these defined areas that are 500 feet from shore and 20 feet deep (operating rule). Finally, the rule would require a "wakeboat" to only be used in one lake per summer unless the wakeboat is decontaminated at a certified Dept. of Environmental Conservation (DEC) service provider (home lake rule). This rule is in response to a petition that was submitted to DEC in March 2022, requesting that DEC regulate wakeboats on certain Vermont lakes. A few editorial corrections are also being made.

FOR FURTHER INFORMATION, CONTACT: Oliver Pierson, Agency of Natural Resources, Davis Building, 3rd Floor, 1 National Life Drive, Montpelier, Vermont 05620-3522 Tel: 802-490-6198 Fax: 802-828-1544 Email: oliver.pierson@vermont.gov URL: <https://dec.vermont.gov/watershed/lakes-ponds/rulemaking>.

FOR COPIES: Katelyn Ellermann, Agency of Natural Resources, Davis Building, 2nd Floor, 1 National Life Drive, Montpelier, Vermont 05620-3901 Tel: 802-522-7125 Fax: 802-828-1544 Email: katelyn.ellerman@vermont.gov.

Rule 5.400 5.400 Petitions to Construct Electric and Gas Facilities Pursuant to 30 V.S.A. § 248.

Vermont Proposed Rule: 23P018

AGENCY: Public Utility Commission

CONCISE SUMMARY: Section 248 of Title 30 of the Vermont Statutes annotated requires persons seeking to build certain electric generation, electric or gas transmission, or energy storage facilities to obtain a certificate of public good from the Commission. Commission Rule 5.400 implements the requirements of Section 248.

The proposed amendments serve four primary purposes. First, they provide increased clarity on the information that must be filed for a Section 248 petition to be considered complete. Second, they update the means by which parties can exchange and collect information in response to technological advances and our experience with the COVID-19 pandemic. Third, they provide clarity on the processes that must be followed when petitioners seek to amend projects that are under review, or have been reviewed and approved. Fourth, the amendments simplify the process for certain persons and entities to intervene as parties in Section 248 cases.

FOR FURTHER INFORMATION, CONTACT: John J. Cotter, Esq., Vermont Public Utility Commission, 112 State Street, 4th Floor, Montpelier, VT 05602 Tel: 802-461-6364 Fax: 802-828-3352 Email: john.cotter@vermont.gov URL: <https://epuc.vermont.gov/?q=node/64/156798>.

FOR COPIES: Elizabeth Schilling, Esq., Vermont Public Utility Commission, 112 State Street, 4th Floor, Montpelier, VT 05602 Tel: 802-828-1164 Fax: 802-828-3352 Email: elizabeth.schilling@vermont.gov.

5.100 Rule Pertaining to Construction and Operation of Net-Metering Systems (the "Net-Metering Rule").

Vermont Proposed Rule: 23P019

AGENCY: Public Utility Commission

CONCISE SUMMARY: This rulemaking involves amendments to the Net-Metering Rule, including changes to the definition of the term "preferred site"; limits on the amount of forest clearing associated with projects on "preferred sites"; updates to the registration and application processes for net-metering systems; changes to project amendment processes and requirements; clarifications regarding the rates applicable to expanded net-metering systems; updates to the transfer and extension requirements for net-metering system certificates of public good; the addition of language authorizing utilities to propose tariffs assessing locational adjustor fees for constrained areas of the grid; changes to update the Rule consistent with state statute and other Commission rules, including the Commission's Rules of Practice and Interconnection Rule; changes acknowledging the use of ePUC - the Commission's electronic filing system; and other changes to otherwise improve, clarify, and streamline the Rule.

FOR FURTHER INFORMATION, CONTACT: Jake Marren, Vermont Public Utility Commission, 112 State St. 4th Floor, Montpelier, VT 05602 Tel: 802-828-2358 Fax: 802-828-3351 Email: jake.marren@vermont.gov URL: <https://puc.vermont.gov/about-us/statutes-and-rules>.

FOR COPIES: Elizabeth Schilling, Vermont Public Utility Commission, 112 State St. 4th Floor, Montpelier, VT 05602 Tel: 802-828-2358 Email: elizabeth.schilling@vermont.gov.

Rule 5.500: Interconnection Procedures for Proposed Electric Generation Resources and Energy Storage Devices.

Vermont Proposed Rule: 23P020

AGENCY: Public Utility Commission

CONCISE SUMMARY: This rulemaking involves amendments to the interconnection rule, including revising the amount of the application fee; adopting standards for the interconnection of storage facilities; updating the procedures for filing an application with the interconnecting utility; establishing simplified procedures for small projects; revising the screening criteria for projects; updating the technical standards applicable to the review of all projects; and establishing requirements for limited export projects. The Commission has reorganized the structure of the proposed rule to improve readability and reduce repetition compared to the current rule.

FOR FURTHER INFORMATION, CONTACT: Jake Marren, Vermont Public Utility Commission, 112 State St. 4th Floor, Montpelier, VT 05602 Tel: 802-828-2358 Fax: 802-828-3351 Email: jake.marren@vermont.gov URL: <https://puc.vermont.gov/about-us/statutes-and-rules>.

FOR COPIES: Mary Jo Krolewski, Vermont Public Utility Commission, 112 State St. 4th Floor, Montpelier, VT 05602 Tel: 802-828-2358 Fax: 802-828-3351 Email: Mary-Jo.Krolewski@vermont.gov.

Medicaid Coverage of Exception Requests.

Vermont Proposed Rule: 23P021

AGENCY: Agency of Human Services

CONCISE SUMMARY: 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.

FOR FURTHER INFORMATION, CONTACT: Ashley Berliner, Agency of Human Services, 280 State Drive, Waterbury, VT 05671-1000 Tel: 802-578-9305 Fax: 802-241-0450 Email: AHS.MedicaidPolicy@vermont.gov. URL: <https://humanservices.vermont.gov/rules-policies/health-care-rules/health-care-administrative-rules-hcar>.

FOR COPIES: Linda Narrow McLemore, Agency of Human Services, 280 State Drive, Waterbury, VT 05671-1000 Tel: 802-779-3258 Fax: 802-241-0450 Email: Linda.McLemore@Vermont.gov.
