

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:

**Critical Incident Management System - Home and Community-
Based Services**

/s/ Kristin L. McClure , on 4/14/25
(signature) (date)

Printed Name and Title:

Kristin McClure, 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



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: November 21, 2024

SUBJECT: Signatory Authority for Purposes of Authorizing Administrative Rules

I hereby designate Kristin McClure, Deputy Secretary, Agency of Human Services 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 Procedures Act, 3. V.S.A § 801 et seq.

CC: KristinMcClure@vermont.gov

1. TITLE OF RULE FILING:

**Critical Incident Management System - Home and
Community-Based Services**

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

24P049

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, Center Building,
Waterbury, Vermont 05671

Telephone: 802-578-9035 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/proposed-rule](https://humanservices.vermont.gov/rules-policies/health-care-rules/health-care-administrative-rules-hcar/proposed-rule)

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: Conor O'Dea

Agency: Agency of Human Services

Mailing Address: 280 State Drive, Center Building,
Waterbury, Vermont 05671

Telephone: 802-798-980 Fax: 802-241-0450

E-Mail: conor.odea@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:

Not applicable

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

Not applicable

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' authority to adopt rules is identified above. The statutes designate AHS as the adopting authority for administrative procedures and grant rulemaking authority for the administration of Vermont's medical assistance programs under Title XIX (Medicaid) of the Social Security Act.

9. THE FILING HAS NOT CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS NOT INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE NOT RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS NOT INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS NOT INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (150 WORDS OR LESS):

The proposed rulemaking outlines Vermont Medicaid's obligations according to federal law in establishing, managing, and upholding an incident management system designed to safeguard the well-being of individuals enrolled in home and community-based services sanctioned under the Global Commitment to Health Waiver. The proposed rulemaking aligns with the federal law stipulating the essential components of such a system, which includes the identification, reporting, prioritization, investigation, resolution, tracking, and analysis of critical incidents.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

The proposed rule aligns with incident management system regulations mandated by the Centers for Medicare and Medicaid Services under 42 CFR § 441.302(a), establishing the requirements for the system.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

The proposed rule aligns with incident management system regulations mandated by Centers for Medicare and Medicaid Services under 42 CFR § 441.302(a), thus ensuring its non-arbitrary nature and regulatory compliance.

17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

HCBS Medicaid Beneficiaries, Agency of Human Services including its Departments, and Community-Based organizations.

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

There is a one-time investment of \$500,000 to enhance the State's critical incident reporting management system. This rule does not increase or reduce the economic burden on any individual or entity, nor does it impact the State's gross annualized budget. The investment ensures compliance with the new rule and recent changes to federal laws.

19. A HEARING WAS HELD.

20. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING, PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 1/10/2025

Time: 11:00 AM

Street Address: Virtual Hearing only - Phone or Microsoft Teams call in 802-828-7667, Phone conference ID: 97680834#; Teams link and information will be posted in the Global Commitment Register online as well.

Zip Code:

URL for Virtual: https://teams.microsoft.com/l/meetup-join/19%3ameeting_NjgzNWVlYWQtNmE2My00MWZiLTk5MDUtMDU3MWUyZmQwMDFl%40thread.v2/0?context=%7b%22Tid%22%3a%2220b

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21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):
1/17/2025

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

Medicaid
HCBS
Home and Community-Based Services
Global Commitment
Incident Management System
Critical Incidents
Abuse
Neglect

Exploitation

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:

**Critical Incident Management System - Home and
Community-Based Services**

2. ADOPTING AGENCY:

Agency of Human Services (AHS)

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU
BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment if the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **A NEW RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF
THE LAST ADOPTION FOR THE EXISTING RULE*):

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:

**Critical Incident Management System - Home and
Community-Based Services**

2. ADOPTING AGENCY:

Agency of Human Services (AHS)

3. CATEGORY OF AFFECTED PARTIES:

*LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY
AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS
ANTICIPATED:*

The categories of people, enterprises, and governmental entities potentially affected by the adoption of this rule:

HCBS Medicaid Beneficiaries, Agency of Human Services including its Departments, and Community-Based organizations.

Anticipated costs and benefits of this rule:

There is a one-time investment of \$500,000 to enhance the State's critical incident reporting management system. This rule does not increase or reduce the economic burden on any individual or entity, nor does it impact the State's gross annualized budget. The investment ensures compliance with the new rule and recent changes to federal laws. The incident management rule aims to enhance the quality of care and ensure the safety and well-being of participants. The minimum set of requirements for the incident management system ensures essential components, including identification, reporting, prioritization, investigation, resolution, tracking, and analysis of critical incidents. The rule is crucial in safeguarding individuals enrolled in Medicaid HCBS programs, enhancing the quality of care, and promoting a safe and supportive environment for participants.

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 anticipated

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 anticipated

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 are no alternatives to the adoption of this rule.
The rule is required to implement federal law.

9. SUFFICIENCY: *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

There are no alternatives to the adoption of this rule; it is necessary to ensure federal alignment with the federal law on incident management systems for Medicaid funded Home-and Community-Based Services.

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:

Critical Incident Management System - Home and Community-Based Services

2. ADOPTING AGENCY:

Agency of Human Services (AHS)

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

No impact anticipated

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 anticipated

5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

No impact anticipated

6. **RECREATION:** *EXPLAIN HOW THE RULE IMPACTS RECREATION IN THE STATE:*
No impact anticipated
7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*
No impact anticipated
8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*
No impact anticipated
9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*
No impact anticipated

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:

Critical Incident Management System - Home and Community-Based Services

2. ADOPTING AGENCY:

Agency of Human Services (AHS)

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

The rule was shared with the Vermont Medicaid and Exchange Advisory Committee, where no comments were received. It was also shared with key external stakeholders, including Vermont Legal Aid, the Bi-State Primary Care Association, Vermont Care Partners, the VNAs of Vermont, the Vermont Association of Hospitals and Health Systems, and the Vermont Medical Society. No comments were received from any of these stakeholders.

The proposed rule will be posted on the AHS website for public comment, and a public hearing will be held on (TBD). When the rule is filed with the Office of the Secretary of State, AHS will provide stakeholders and all persons who subscribe to the Global Commitment Register with notice and access to it through the Global Commitment Register.

The Global Commitment Register, a comprehensive database, ensures easy access to notifications of policy changes and clarification of existing Medicaid

Public Input

policy, including rulemaking, under Vermont's 1115 Global Commitment to Health waiver. It's open for subscription to all. Subscribers will receive email notifications about the filing, including hyperlinks to the documents posted on the Global Commitment Register and an explanation of how to be further involved in the rulemaking.

Lastly, the rule will be presented to the Department of Disabilities, Aging, and Independent Living Advisory Board.

4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

The Agency of Human Services including its departments;
DAIL Advisory Committee;

State DMH Program Standing Committees

Incorporation by Reference

THIS FORM IS ONLY REQUIRED WHEN INCORPORATING MATERIALS BY REFERENCE. PLEASE REMOVE PRIOR TO DELIVERY IF IT DOES NOT APPLY TO THIS RULE FILING:

Instructions:

In completing the incorporation by reference statement, an agency describes any materials that are incorporated into the rule by reference and how to obtain copies.

This form is only required when a rule incorporates materials by referencing another source without reproducing the text within the rule itself (e.g., federal or national standards, or regulations).

Incorporated materials will be maintained and available for inspection by the Agency.

1. TITLE OF RULE FILING:

Critical Incident Management System - Home and Community-Based Services

2. ADOPTING AGENCY:

Agency of Human Services (AHS)

3. DESCRIPTION (*DESCRIBE THE MATERIALS INCORPORATED BY REFERENCE*):

42 C.F.R. 441.302(a)(6), which provides mandatory Assurance that the State operates and maintains an incident management system that identifies, reports, triages, investigates, resolves, tracks, and trends critical incidents, is incorporated by reference into this proposed rule at 9.101.1.

42 C.F.R. 441.302(a)(6) states:

(6) Assurance that the State operates and maintains an incident management system that identifies, reports, triages, investigates, resolves, tracks, and trends critical incidents.

(i) Requirements. The State must:

(A) Define critical incident to include, at a minimum—

- (1) Verbal, physical, sexual, psychological, or emotional abuse;
 - (2) Neglect;
 - (3) Exploitation including financial exploitation;
 - (4) Misuse or unauthorized use of restrictive interventions or seclusion;
 - (5) A medication error resulting in a telephone call to, or a consultation with, a poison control center, an emergency department visit, an urgent care visit, a hospitalization, or death; or
 - (6) An unexplained or unanticipated death, including but not limited to a death caused by abuse or neglect;
- (B) Use an information system, as defined in 45 CFR 164.304 and compliant with 45 CFR part 164, that, at a minimum, enables—
- (1) Electronic critical incident data collection;
 - (2) Tracking (including of the status and resolution of investigations); and
 - (3) Trending;
- (C) Require providers to report to the State, within State-established timeframes and procedures, any critical incident that occurs during the delivery of services authorized under section 1915(c) of the Act and as specified in the beneficiary's person-centered service plan, or occurs as a result of the failure to deliver services authorized under section 1915(c) of the Act and as specified in the beneficiary's person-centered service plan;
- (D) Use claims data, Medicaid fraud control unit data, and data from other State agencies, such as Adult Protective Services or Child Protective Services, to the extent permissible under applicable State law to identify critical incidents that are unreported by providers and occur during the delivery of services authorized under section 1915(c) of the Act and as specified in the beneficiary's person-centered service plan, or occur as a result of the failure to deliver services authorized under section 1915(c) of the Act

and as specified in the beneficiary's person-centered service plan;

(E) Ensure that there is information sharing on the status and resolution of investigations, such as through the use of information sharing agreements, between the State and the entity or entities responsible in the State for investigating critical incidents as defined in paragraph (a)(6)(i)(A) of this section if the State refers critical incidents to other entities for investigation;

(F) Separately investigate critical incidents if the investigative agency fails to report the resolution of an investigation within State-specified timeframes; and

(G) Demonstrate that it meets the requirements in paragraph (a)(6) of this section through the reporting requirement at § 441.311(b)(1).

(ii) Minimum performance at the State level. The State must demonstrate, through the reporting requirements at § 441.311(b)(2), that it meets the following minimum performance levels:

(A) Initiate an investigation, within State-specified timeframes, for no less than 90 percent of critical incidents;

(B) Complete an investigation and determine the resolution of the investigation, within State-specified timeframes, for no less than 90 percent of critical incidents; and

(C) Ensure that corrective action has been completed within State-specified timeframes, for no less than 90 percent of critical incidents that require corrective action.

(iii) Applicability date. States must comply with the requirements in paragraph (a)(6) of this section beginning 3 years after July 9, 2024; except for the requirement at paragraph (a)(6)(i)(B) of this section, with which the State must comply beginning 5 years after July 9, 2024; and in the case of the State that implements a managed care delivery system under the authority of sections 1915(a), 1915(b), 1932(a), or

1115(a) of the Act and includes HCBS in the MCO's, PIHP's, or PAHP's contract, the first rating period for contracts with the MCO, PIHP, or PAHP beginning on or after 3 years after July 9, 2024, except for the requirement at paragraph (a)(6)(i)(B) of this section, with which the first rating period for contracts with the MCO, PIHP or PAHP beginning on or after 5 years after July 9, 2024.

4. FORMAL CITATION OF MATERIALS INCORPORATED BY REFERENCE:

42 C.F.R. 441.302(a)(6)

5. OBTAINING COPIES: (*EXPLAIN WHERE THE PUBLIC MAY OBTAIN THE MATERIAL(S) IN WRITTEN OR ELECTRONIC FORM, AND AT WHAT COST*):

The public may obtain the material in electronic form from the following web address at no cost.

[https://www.ecfr.gov/current/title-42/part-441#p-441.302\(a\)\(6\)](https://www.ecfr.gov/current/title-42/part-441#p-441.302(a)(6))

6. MODIFICATIONS (*PLEASE EXPLAIN ANY MODIFICATION TO THE INCORPORATED MATERIALS E.G., WHETHER ONLY PART OF THE MATERIAL IS ADOPTED AND IF SO, WHICH PART(S) ARE MODIFIED*):

There are no modifications.

Run Spell Check

Critical Incident Management System – Home and Community-Based Services

9.101 Critical Incident Reporting (xx/xx/xxx, GCR xx-xxx)

9.101.1 Introduction

The rule sets forth Vermont Medicaid's responsibilities under 42 CFR 441.302(a)(6) to implement, operate, and maintain an incident management system that protects the health and welfare of individuals receiving home and community-based services authorized under the Global Commitment to Health Waiver, as approved by the Centers for Medicare and Medicaid Services (CMS). The rule sets the minimum requirements of an incident management system that identifies, reports, triages, investigates, resolves, tracks, and trends critical incidents.

9.101.2 Definitions

For the purposes of this rule, the term:

- (a) **“Individual”** means a person enrolled in one of Vermont’s Medicaid Home and Community-Based Services (HCBS) programs.
- (b) **“Investigation”** means a response to a report of abuse, neglect, or exploitation that begins with the systematic gathering of information to determine whether the abuse, neglect, or exploitation has occurred and, if so, the appropriate response.
- (c) **“Investigative Agency”** means Vermont’s Adult Protective Services (APS) program as the primary unit of state government responsible for investigating allegations of abuse, neglect, and exploitation of vulnerable adults, or Vermont’s Child Protective Services (CPS) program as the primary unit of the state government responsible for investigating allegations of abuse, neglect, and exploitation of children.
- (d) **“Critical Incident”** means, at a minimum:
 - (1) Verbal, physical, psychological, or emotional abuse,
 - (2) Neglect,
 - (3) Exploitation, including financial exploitation,
 - (4) Misuse or unauthorized use of restrictive interventions, including restraints and seclusion,
 - (5) A medication error resulting in a telephone call to or a consultation with a poison control center, an emergency department visit, an urgent care visit, a hospitalization, or death, or
 - (6) An unexplained or unanticipated death, including but not limited to a death caused by abuse or neglect.

9.101.3 Establishing and maintaining protocols for critical incident reporting

- (a) The incident management system must include maintaining and updating protocols as appropriate, specifying how to report critical incidents.
 - (1) These protocols must include a standardized form for reporting critical incidents to ensure consistency and clarity.

Critical Incident Management System – Home and Community-Based Services

9.101.4 Developing and implementing the incident system

- (a) The incident management system must, at a minimum include:
- (1) Electronic incident system that enables electronic collection and tracking, including the status and resolution of investigations and trending of data on critical incidents.
 - (2) A method for providers to report any critical incidents that occur during the delivery of services as specified in the individual's person-centered service plan or any critical incidents that are a result of the failure to deliver authorized services.
 - (3) Investigation protocol that includes sharing information on the status and resolution of investigations.
 - (4) Separately investigate critical incidents if the investigative agency fails to report the resolution of an investigation within the AHS-specified timeframes.

9.101.5 Additional System Requirements

- (a) The incident system must have the ability to determine if the AHS met its specified timeframes for initiating investigations, completing investigations determining resolution, and completing corrective action plans for all incidents requiring an investigation.



INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: October 14, 2024, virtually via Microsoft Teams

Members Present: Chair Sean Brown, Jared Adler, Jennifer Mojo, John Kessler, Michael Obuchowski, Natalie Weill, and Nicole Dubuque

Members Absent: Diane Sherman

Minutes By: Melissa Mazza-Paquette

- 2:00 p.m. meeting called to order, welcome and introductions.
- Review and approval of [minutes](#) from the August 12, 2024 meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
- No public comments made.
- Presentation of Proposed Rules on pages to follow.
 1. Updates to the Hazard Communication Standard, Department of Labor, page 2
 2. Administrative Rules of the Board of Dental Examiners, Secretary of State, Office of Professional Regulation, page 3
 3. Council Rules, Vermont Criminal Justice Council, page 4
 4. Critical Incident Management System – Home and Community-Based Services, Agency of Human Services, page 5
 5. Person-centered Planning – Home and Community-Based Services, Agency of Human Services, page 6
- Next scheduled meeting is Friday, November 15, 2024 at 1:00 p.m.
- 3:04 p.m. meeting adjourned.

Proposed Rule: Critical Incident Management System – Home and Community-Based Services, Agency of Human Services

Presented By: Connor O'Dea

Motion made to accept the rule by Sean Brown, seconded by Jared Adler, and passed unanimously except for Natalie Weill who abstained, with the following recommendations:

1. Proposed Filing – Coversheet, #7: Confirm who has the authority to adopt rules (such as the Secretary of the Agency, the Agency itself, etc.).
2. Public Input Maximization Plan, #3: Be consistent with the public hearing date stated in the Proposed Filing – Coversheet.

DRAFT

(802) 828-2863

MEMORANDUM

OFFICE OF THE SECRETARY OF STATE

Primary Contact: Ashley Berliner, Agency of Human Services, Center Building, 280 State Drive, Waterbury, VT 05671-1000
Tel: 802-578-9305 Fax: 802-241-0450 Email: Ashley.Berliner@vermont.gov

Secondary Contact: Connor O'Dea, Agency of Human Services, Center Building, 280 State Drive, Waterbury, VT 05671-1000
Tel: 802-798-9890 Fax: 802-241-0450 Email: conor.odea@vermont.gov

URL: <https://humanservices.vermont.gov/rules-policies/health-care-rules/health-care-administrative-rules-hcar/p>

From: APA Coordinator, VSARA

RE: Critical Incident Management System - Home and Community-Based Services.

Date 04/30/2025

We received Proposed Rule on 11/27/2024
Final Proposed Rule on 04/30/2025
Adopted Rule on

We have assigned the following rule number(s):

Proposed Rule Number: 24P049

Adopted Rule Number:

(Final Proposals are not assigned a new number; they retain the Proposed Rule Number.)

The following problems were taken care of by phone/should be taken care of immediately: Proposed Filing, the Year for the hearing dates and deadline for comment were entered as 2024, when it is supposed to be 2025.
The dates have been corrected by SOS staff.

We cannot accept this filing until the following problems are taken care of:

The notice for this proposed rule appeared/will appear online on: 12/4/2024 and in the newspapers of record on 12/12/2024.

This rule takes effect on
Adoption Deadline: 07/27/2025

Please note: The agency has requested a combined notice for 24P048, and 24P049.

If you have any questions, please call me at 828-2863. OR
E-Mail me at: sos.statutoryfilings@vermont.gov

cc: Emery Mattheis

The Vermont Statutes Online

The Statutes below include the actions of the 2024 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 025 : Administrative Procedure

Subchapter 001 : GENERAL PROVISIONS

(Cite as: 3 V.S.A. § 801)

§ 801. Short title and definitions

(a) This chapter may be cited as the “Vermont Administrative Procedure Act.”

(b) As used in this chapter:

(1) “Agency” means a State board, commission, department, agency, or other entity or officer of State government, other than the Legislature, the courts, the Commander in Chief, and the Military Department, authorized by law to make rules or to determine contested cases.

(2) “Contested case” means a proceeding, including but not restricted to rate-making and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.

(3) “License” includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law.

(4) “Licensing” includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(5) “Party” means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(6) “Person” means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(7) “Practice” means a substantive or procedural requirement of an agency, affecting one or more persons who are not employees of the agency, that is used by the agency in the discharge of its powers and duties. The term includes all such requirements, regardless of whether they are stated in writing.

(8) “Procedure” means a practice that has been adopted in writing, either at the election of the agency or as the result of a request under subsection 831(b) of this title. The term includes any practice of any agency that has been adopted in writing, whether or not labeled as a procedure, except for each of the following:

(A) a rule adopted under sections 836-844 of this title;

(B) a written document issued in a contested case that imposes substantive or procedural requirements on the parties to the case;

(C) a statement that concerns only:

(i) the internal management of an agency and does not affect private rights or procedures available to the public;

(ii) the internal management of facilities that are secured for the safety of the public and the individuals residing within them; or

(iii) guidance regarding the safety or security of the staff of an agency or its designated service providers or of individuals being provided services by the agency or such a provider;

(D) an intergovernmental or interagency memorandum, directive, or communication that does not affect private rights or procedures available to the public;

(E) an opinion of the Attorney General; or

(F) a statement that establishes criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections, in settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if disclosure of the criteria or guidelines would compromise an investigation or the health and safety of an employee or member of the public, enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons that are in an adverse position to the State.

(9) “Rule” means each agency statement of general applicability that implements, interprets, or prescribes law or policy and that has been adopted in the manner provided by sections 836-844 of this title.

(10) “Incorporation by reference” means the use of language in the text of a regulation that expressly refers to a document other than the regulation itself.

(11) “Adopting authority” means, for agencies that are attached to the Agencies of Administration, of Commerce and Community Development, of Natural Resources, of Human Services, and of Transportation, or any of their components, the secretaries of those agencies; for agencies attached to other departments or any of their components, the commissioners of those departments; and for other agencies, the chief officer of the agency. However, for the procedural rules of boards with quasi-judicial powers, for the Transportation Board, for the Vermont Veterans’ Memorial Cemetery Advisory Board,

and for the Fish and Wildlife Board, the chair or executive secretary of the board shall be the adopting authority. The Secretary of State shall be the adopting authority for the Office of Professional Regulation.

(12) “Small business” means a business employing no more than 20 full-time employees.

(13)(A) “Arbitrary,” when applied to an agency rule or action, means that one or more of the following apply:

(i) There is no factual basis for the decision made by the agency.

(ii) The decision made by the agency is not rationally connected to the factual basis asserted for the decision.

(iii) The decision made by the agency would not make sense to a reasonable person.

(B) The General Assembly intends that this definition be applied in accordance with the Vermont Supreme Court’s application of “arbitrary” in *Beyers v. Water Resources Board*, 2006 VT 65, and *In re Town of Sherburne*, 154 Vt. 596 (1990).

(14) “Guidance document” means a written record that has not been adopted in accordance with sections 836-844 of this title and that is issued by an agency to assist the public by providing an agency’s current approach to or interpretation of law or describing how and when an agency will exercise discretionary functions. The term does not include the documents described in subdivisions (8)(A) through (F) of this section.

(15) “Index” means a searchable list of entries that contains subjects and titles with page numbers, hyperlinks, or other connections that link each entry to the text or document to which it refers. (Added 1967, No. 360 (Adj. Sess.), § 1, eff. July 1, 1969; amended 1981, No. 82, § 1; 1983, No. 158 (Adj. Sess.), eff. April 13, 1984; 1985, No. 56, § 1; 1985, No. 269 (Adj. Sess.), § 4; 1987, No. 76, § 18; 1989, No. 69, § 2, eff. May 27, 1989; 1989, No. 250 (Adj. Sess.), § 88; 2001, No. 149 (Adj. Sess.), § 46, eff. June 27, 2002; 2017, No. 113 (Adj. Sess.), § 3; 2017, No. 156 (Adj. Sess.), § 2.)

The Vermont Statutes Online

The Statutes below include the actions of the 2024 session of the General Assembly.

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Title 33 : Human Services

Chapter 019 : Medical Assistance

Subchapter 001 : MEDICAID

(Cite as: **33 V.S.A. § 1901e**)

§ 1901e. Global Commitment Fund

(a) The Global Commitment Fund is created in the Treasury as a special fund. The Fund shall consist of the revenues received by the Treasurer as payment of the actuarially certified premium from the Agency of Human Services to the managed care organization within the Department of Vermont Health Access for the purpose of providing services under the Global Commitment to Health waiver approved by the Centers for Medicare and Medicaid Services under Section 1115 of the Social Security Act.

(b) The monies in the Fund shall be disbursed as allowed by appropriation of the General Assembly, and shall be disbursed by the Treasurer on warrants issued by the Commissioner of Finance and Management, when authorized by the Commissioner of Vermont Health Access and approved by the Commissioner of Finance and Management consistent with the interdepartmental agreements between the managed care organization within the Department of Vermont Health Access and departments delivering eligible services under the waiver. The Department of Vermont Health Access shall not modify an appropriation through an interdepartmental agreement or any other mechanism. A department or agency authorized to spend monies from this Fund under an interdepartmental agreement may spend monies appropriated as a base Medicaid expense for an allowable managed care organization investment under the terms and conditions of the Global Commitment to Health Medicaid Section 1115 waiver only after receiving approval from the Agency of Human Services.

(c) Annually, on or before October 1, the Agency shall provide a detailed report to the Joint Fiscal Committee that describes the managed care organization's investments under the terms and conditions of the Global Commitment to Health Medicaid Section 1115 waiver, including the amount of the investment and the agency or departments authorized to make the investment. (Added 2005, No. 93 (Adj. Sess.), § 16c, eff. Oct. 1, 2005; amended 2005, No. 215 (Adj. Sess.), § 307, eff. May 31, 2006; 2009, No. 156 (Adj. Sess.), § 1.46; 2013, No. 131 (Adj. Sess.), § 40, eff. May 20, 2014; 2015, No. 172 (Adj. Sess.), § E.306.5; 2021, No. 20, § 299.)

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

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	Times Argus / Rutland Herald Classified Ads (classified.ads@rutlandherald.com)	Tel: 802-747-6121 ext 2238 FAX: 802-776-5600
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	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: May 1, 2025

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

December 12, 2024

PAGES INCLUDING THIS COVER MEMO:

2

***NOTE* 8-pt font in body. 12-pt font max. for headings - single space body. Please include dashed lines where they appear in ad copy. Otherwise minimize the use of white space. Exceptions require written approval.**

If you have questions, or if the printing schedule of your paper is disrupted by holiday etc. please contact VSARA at 802-828-3700, or E-Mail sos.statutoryfilings@vermont.gov, Thanks.

PROPOSED STATE RULES

By law, public notice of proposed rules must be given by publication in newspapers of record. The purpose of these notices is to give the public a chance to respond to the proposals. The public notices for administrative rules are now also available online at <https://secure.vermont.gov/SOS/rules/>. The law requires an agency to hold a public hearing on a proposed rule, if requested to do so in writing by 25 persons or an association having at least 25 members.

To make special arrangements for individuals with disabilities or special needs please call or write the contact person listed below as soon as possible.

To obtain further information concerning any scheduled hearing(s), obtain copies of proposed rule(s) or submit comments regarding proposed rule(s), please call or write the contact person listed below. You may also submit comments in writing to the Legislative Committee on Administrative Rules, State House, Montpelier, Vermont 05602 (802-828-2231).

Note: The two rules below are being promulgated by the Agency of Human Services who has requested the notices be combined to facilitate a savings for the agency. Please note the title and number of the rule(s) you are interested in when contacting the agency.

- 8.103: Person-centered Planning – Home and Community-Based Services
Vermont Proposed Rule: **24P048**
- 9.101: Critical Incident Management System – Home and Community-Based Services
Vermont Proposed Rule: **24P049**

AGENCY: Agency of Human Services

CONCISE SUMMARY: The proposed rules establish the framework for incident management and person-centered planning in Vermont Medicaid under the Global Commitment to Health Waiver. Rule 9.101 outlines the requirements for an incident management system to safeguard individuals receiving home and community-based services, while Rule 8.103 details the criteria for person-centered service planning, ensuring alignment with individual needs and documenting any modifications to residential rights.

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 E-Mail: ashley.berliner@vermont.gov
URL: <http://humanservices.vermont.gov/on-line-rules>.

Rule Number:	24P049
Title:	Critical Incident Management System - Home and Community-Based Services.
Type:	Standard
Status:	Final Proposed
Agency:	Agency of Human Services
Legal Authority:	3 V.S.A. § 801(b)(11); 33 V.S.A. § 1901(a)(1)
Summary:	The proposed rulemaking outlines Vermont Medicaid's obligations according to federal law in establishing, managing, and upholding an incident management system designed to safeguard the well-being of individuals enrolled in home and community-based services sanctioned under the Global Commitment to Health Waiver. The proposed rulemaking aligns with the federal law stipulating the essential components of such a system, which includes the identification, reporting, prioritization, investigation, resolution, tracking, and analysis of critical incidents.
Persons Affected:	HCBS Medicaid Beneficiaries, Agency of Human Services and its Departments and Community-Based organizations.
Economic Impact:	There is a one-time investment of \$500,000 to enhance the State's critical incident reporting management system. This rule does not increase or reduce the economic burden on any individual or entity, nor does it impact the State's gross annualized budget. The investment ensures compliance with the new rule and recent changes to federal laws.
Posting date:	Dec 04,2024

Hearing Information

Information for Hearing # 1

Hearing date:	01-10-2025 11:00 AM ADD TO YOUR CALENDAR
Location:	Virtual via MS Teams only
Address:	https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting
City:	Meeting ID: 280 570 096 366 Passcode: SmHpbZ call in 802-828-7667, Phone conference ID: 97680834#
State:	VT
Zip:	n/a
Hearing Notes:	Virtually via MS Teams only - Phone or MicrosoftTeams call in 802-828-7667, Phone conference ID: 97680834#; https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting Meeting ID: 280 570 096 366 Passcode: SmHpbZ

Contact Information

Information for Primary Contact

PRIMARY CONTACT PERSON - A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE COM

Level:	Primary
Name:	Ashley Berliner
Agency:	Agency of Human Services
Address:	280 State Drive, Center Building
City:	Waterbury
State:	VT
Zip:	05671-1000
Telephone:	802-578-9305
Fax:	802-241-0450

Email: Ashley.Berliner@vermont.gov

[SEND A COMMENT](#)

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

[VIEW WEBSITE](#)

Information for Secondary Contact

SECONDARY CONTACT PERSON - A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED. QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT

Level: Secondary

Name: Conor O'Dea

Agency: Agency of Human Services

Address: 280 State Drive, Center Building

City: Waterbury

State: VT

Zip: 05671-1000

Telephone: 802-798-9890

Fax: 802-241-0450

Email: conor.odea@vermont.gov

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Keyword Information

Keywords:

Medicaid

HCBS

Home-and Community-Based Services

Global Commitment

Incident Management System

Critical Incidents

Abuse

Neglect

Exploitation

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