

Administrative Procedures – Final Proposed Rule Filing

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 requiring a signature shall be original signatures of the appropriate adopting authority or authorized person, and all filings are to 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:

Applied Behavior Analysis Services

/s/ Michael K. Smith , on 5/18/2021
(signature) (date)

Printed Name and Title:
Michael K. Smith, Secretary 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

Final Proposed Coversheet

1. TITLE OF RULE FILING:

Applied Behavior Analysis Services

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

21P-012

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: Ashley.berliner@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: Hillary Hill

Agency: Department of Vermont Health Access

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

Telephone: 802 989 - 4245 Fax: 802 241 - 0450

E-Mail: hillary.hill@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:

Final Proposed Coversheet

(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 afford rulemaking authority for the administration of Vermont's medical assistance programs under Title XIX (Medicaid) of the Social Security Act.

9. THE FILING HAS 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 rule sets forth the criteria for Medicaid coverage for applied behavior analysis services under Vermont's Medicaid program. This is a new rule that reflects current practice and policy.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

The rule is necessary to define coverage for applied behavior analysis services.

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

Final Proposed Coversheet

including consideration of how the rule affects the people and entities listed below.

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

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

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 2021. The rule reflects current practice and policy.

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: 4/7/2021

Time: 12:00 PM

Street Address: Virtual hearing via Microsoft Teams 802-552-8456 Phone Conference ID: 792 650 973#

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Final Proposed Coversheet

Street Address:

Zip Code:

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

4/14/2021

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

Applied Behavior Analysis

ABA

Medicaid

Health Care Administrative Rules

HCAR



State of Vermont
Agency of Human Services
280 State Drive
Waterbury, VT 05671-1000
www.humanservices.vermont.gov

Michael K. Smith, Secretary
[phone] 802-241-0440
[fax] 802-241-0450

MEMORANDUM

To: Jim Condos, Secretary of State, Vermont Secretary of State Office
Sen. Mark A. MacDonald, Chair, Legislative Committee on Administrative Rules (LCAR)

From: Ashley Berliner, Director of Health Care Policy and Planning, Department of Vermont Health Access

Cc: Michael K. Smith, Secretary, Agency of Human Services
Charlene Dindo, Committee Assistant, Legislative Committee on Administrative Rules
Louise Corliss, Administrative Services/APA Coordinator, Secretary of State's Office

Date: May 18, 2021

Re: Agency of Human Services Final Proposed Rule Filing

Enclosed are the final proposed rule filings for the following Health Care Administrative Rules:

Amended:

- 21P009 Home Health Services
- 21P010 Durable Medical Equipment
- 21P011 Medical Supplies

New:

- 21P012 Applied Behavior Analysis Services

Public comments were received for the Durable Medical Equipment and Medical Supplies rules during the public comment period. A copy of the comments received, and the responsiveness summary, is included with the rule filings. None of the rules in this filing have been amended since they were filed as proposed rules.

The annotated and non-annotated final proposed rules are also posted on the Agency of Human Services' website: <https://humanservices.vermont.gov/rules-policies/health-care-rules/health-care-administrative-rules-hcar/proposed-rules>

If you have any questions regarding these rules, please contact Ashley Berliner, Director of Health Care Policy and Planning, at 802-578-9305.

Administrative Procedures – 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:

Applied Behavior Analysis 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 as long as 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*):

N/A

INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: February 8, 2021

Members Present: Chair Kristin Clouser, Ashley Berliner, Diane Bothfeld, Jennifer Mojo, John Kessler, Matt Langham, Diane Sherman and Clare O'Shaughnessy

Members Absent: Dirk Anderson

Minutes By: Melissa Mazza-Paquette

- 2:02 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the December 14, 2020 meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
 - Note from agenda: An emergency rule titled 'Emergency Administrative Rules for Remote Hearings for the Board of Medical Practice' by the Department of Health was supported by ICAR Chair Clouser on 1/22/21.
- No public comments made.
- Presentation of Proposed Rules on pages 2-13 to follow.
 1. Rules Governing the Licensing of Educators and the Preparation of Educational Professionals, Vermont Standards Board for Professional Educators, page 2
 2. Health Care Stop Loss Insurance (H-2009-02), Department of Financial Regulation, page 3
 3. Health Benefits Eligibility and Enrollment Rule, General Provisions and Definitions (Part 1), Agency of Human Services, page 4
 4. Health Benefits Eligibility and Enrollment Rule, Financial Methodologies (Part 5), Agency of Human Services, page 5
 5. Health Benefits Eligibility and Enrollment Rule, Eligibility and Enrollment Procedures (Part 7), Agency of Human Services, page 6
 6. Health Benefits Eligibility and Enrollment Rule, State Fair Hearings and Expedited Eligibility Appeals (Part 8), Agency of Human Services, page 7
 7. Rules Governing Medication-Assisted Treatment for Opioid Use Disorder, Agency of Human Services, Department of Health, page 8
 8. 10 V.S.A. App. § 122. Fish Management Regulation, Department of Fish and Wildlife Board, page 9
 9. Home Health Services, Agency of Human Services, page 10
 10. Durable Medical Equipment, Agency of Human Services, page 11
 11. Medical Supplies, Agency of Human Services, page 12
 12. Applied Behavior Analysis Services, Agency of Human Services, page 13
- Next scheduled meeting is March 8, 2021 at 2:00 p.m.
- 3:35 p.m. meeting adjourned.

Proposed Rule: Applied Behavior Analysis Services, Agency of Human Services
Presented By: Ashley Berliner

Motion made to accept the rule by Diane Bothfeld, seconded by Jen Mojo, and passed unanimously except for Ashley Berliner who abstained, with the following recommendations:

1. Proposed Rule Coversheet, #8 and #12: Clarify language and harmonize wording.



Administrative Procedures – 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.

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:

Applied Behavior Analysis Services

2. ADOPTING AGENCY:

Agency of Human Services (AHS)

3. CATEGORY OF AFFECTED PARTIES:

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

There are no additional costs associated with this rule because the amendments reflect the existing practice and coverage policies for Medicaid in Vermont.

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

Economic Impact Analysis

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:** *EXPLAIN THE SUFFICIENCY OF THIS ECONOMIC IMPACT ANALYSIS.*

There is no economic impact.

Administrative Procedures – 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.

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:

Applied Behavior Analysis Services

2. ADOPTING AGENCY:

Agency of Human Services (AHS)

3. **GREENHOUSE GAS:** *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*
No impact

4. **WATER:** *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*
No impact

5. **LAND:** *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*
No impact

6. **RECREATION:** *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*
No impact

7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*
No impact

Environmental Impact Analysis

8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*
No impact

9. **SUFFICIENCY:** *EXPLAIN THE SUFFICIENCY OF THIS ENVIRONMENTAL IMPACT ANALYSIS.*
This rule has no impact on the environment.

Administrative Procedures – Public Input

Instructions:

In completing the public input statement, an agency describes the strategy prescribed by ICAR to maximize public input, what it did do, or will do to comply with that plan to maximize the involvement of the public in the development of the rule.

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

1. TITLE OF RULE FILING:

Applied Behavior Analysis Services

2. ADOPTING AGENCY:

Agency of Human Services (AHS)

3. PLEASE DESCRIBE THE STRATEGY PRESCRIBED BY ICAR TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

The ICAR hearing was held on February 8, 2021. ICAR prescribed that AHS maximize public involvement by completing the public rulemaking process, including holding a public hearing and considering public comments that are received.

4. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

AHS shared the proposed rule with Vermont Legal Aid (VLA) and stakeholders including the Applied Behavior Analysis Medicaid providers in Vermont on November 23, 2020. Comments were received and considered.

AHS notified the Medicaid and Exchange Advisory Committee (MEAC) on November 23, 2020 including the estimated timeframe for filing and the proposed amendments to the rule. No comments were received.

The proposed rule was posted on the AHS website for public comment and a public hearing was held on April 7, 2021. 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

Public Input

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 notification of rule filings including hyperlinks to posted documents and an explanation of how to provide comment and be involved in the rulemaking.

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

Agency of Human Services, and the Department of Vermont Health Access;

Vermont Legal Aid;

Applied Behavior Analysis Medicaid providers in Vermont;

Medicaid and Exchange Advisory Committee.

Clean
Text

Applied Behavior Analysis Services

4.229 Applied Behavior Analysis Services

4.229.1 Definitions

For the purposes of this rule, the term:

- (a) **“Applied Behavior Analysis (ABA)”** means the design, implementation, and evaluation of the instructional and environmental modifications by a behavior analyst to provide socially significant improvements in human behavior.
- (b) **“Board Certified Behavior Analyst (BCBA)”** means an independent practitioner who provides ABA services, holds a master’s degree, and is certified through the National Behavior Analyst Certification Board (BACB). BCBA’s also supervise the work of Board Certified Assistant Behavior Analysts and Behavior Technicians.
- (c) **“Board Certified Assistant Behavior Analyst (BCaBA)”** means an ABA provider who holds a minimum of a bachelor’s degree, is certified through the BACB, and is directly supervised by a BCBA. BCaBA’s may supervise the work of Behavior Technicians.
- (d) **“Behavior Technician (BT), including Registered Behavior Technician (RBT)”** means an ABA provider who holds a bachelor’s degree, or is pursuing a bachelor’s degree, and practices under close, ongoing supervision of a BCBA or BCaBA supervisor. Relevant experience may be exchanged for a degree.

4.229.2 Covered Services

Medically necessary ABA services include:

- (a) Functional Assessment and Analysis
- (b) Treatment plan development
- (c) Direct treatment
- (d) Program supervision
- (e) Parent/caregiver training
- (f) Team conferences

4.229.3 Eligibility for Care

For a beneficiary to receive ABA services, they must:

- (a) Be actively enrolled in Medicaid at the time of the service,
- (b) Be under the age of 21,
- (c) Have a Diagnostic and Statistical Manual of Mental Disorders (latest edition) diagnosis of Autism Spectrum Disorder, early childhood developmental disorder, or any successor diagnosis,
- (d) Have a prescription for ABA from a:
 - (1) Board certified or board eligible psychiatrist,
 - (2) Doctorate-level licensed psychologist,

Applied Behavior Analysis Services

- (3) Board certified or board eligible pediatrician,
 - (4) Board certified or board eligible neurologist, or
 - (5) Developmental-behavioral or neurodevelopmental disabilities pediatrician, and
- (e) Be medically stable and not require 24-hour medical or nursing monitoring or in need of procedures provided in a hospital level of care on an ongoing basis.

4.229.4 Qualified Providers

BCBAs and BCaBAs providing ABA services must be licensed in Vermont, working within the scope of their practice, and enrolled in Vermont Medicaid.

4.229.5 Prior Authorization Requirements

The Vermont Medicaid Fee Schedule contains a detailed list of covered services and indicates which services require prior authorization. The Fee Schedule can be found on the Department of Vermont Health Access website.

4.229.6 Non-Covered Services

Vermont Medicaid will not authorize ABA services for any of the following:

- (a) School-based ABA services authorized under the Individuals with Disabilities Education Act (IDEA) and reimbursed by the Agency of Education,
- (b) Respite care,
- (c) Orientation and mobility,
- (d) Psychiatric hospitalization, or
- (e) Medicaid beneficiaries in long term out-of-home placement/care outside a community setting.

VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

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.)

VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

Title 33 : Human Services

Chapter 009 : Division Of Rate Setting

(Cite as: 33 V.S.A. § 901)

§ 901. Reimbursement objectives

Reimbursement rates for nursing homes shall reflect the following objectives:

- (1) maintain an equitable and fair balance between cost containment and quality care in nursing homes;
- (2) encourage nursing homes to admit persons without regard to their source of payment;
- (3) provide an incentive to nursing homes to admit and provide care to persons in need of comparatively greater care;
- (4) be manageable administratively for both the State and nursing homes; and
- (5) prevent unnecessary cost increases. (Added 1989, No. 267 (Adj. Sess.), § 1, eff. July 1, 1991; amended 1995, No. 160 (Adj. Sess.), § 10.)



Proposed Rules Postings

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Deadline For Public Comment

Deadline: Apr 14, 2021

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

Rule Details

Rule Number:	21P012
Title:	Applied Behavior Analysis Services.
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:	The rule sets forth the criteria for Medicaid coverage for applied behavior analysis services under Vermont's Medicaid program. This is a new rule that reflects current practice and policy.
Persons Affected:	Medicaid beneficiaries; Agency of Human Services including its Departments; hospitals; health law,

Information for Secondary Cont

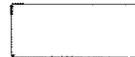
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Level: Secondary
Name: Hillary Hill
Agency: Agency of Human Services
Address: 280 State Drive
City: Waterbury
State: VT
Zip: 05671-1000
Telephone: 802-989-4245
Fax: 802-241-0450
Email: hillary.hill@vermont.gov

Keyword Information

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FROM: Louise Corliss, APA Clerk

Date of Fax: June 7, 2021

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

March 11, 2021

PAGES INCLUDING THIS COVER MEMO:

3

***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 Louise Corliss at 802-828-2863, or E-Mail louise.corliss@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).

Rules Governing Medication-Assisted Treatment for Opioid Use Disorder.

Vermont Proposed Rule: 21P004

AGENCY: Agency of Human Services, Department of Health

CONCISE SUMMARY: This rulemaking amends the Medication-Assisted Treatment (MAT) Rule to (1) remove patient load limits that are determined at the federal level and change periodically; (2) Require providers with >100 clients to submit to the Department for review a continuity of care checklist to ensure they have an adequate plan for the continued care of their patients should there be an issue with a practitioner's ability to provide services; and (3) update terms, references, and formatting.

FOR FURTHER INFORMATION, CONTACT: Brendan Atwood, Vermont Department of Health, 108 Cherry Street, Burlington, VT 05402 Tel: 802-863-7280 Fax: 802-951-1275 Email: brendan.atwood@vermont.gov URL: <https://www.healthvermont.gov/about-us/laws-regulations/public-comment>.

FOR COPIES: Shayla Livingston, Vermont Department of Health, 108 Cherry Street, Burlington, VT 05401 Tel: 802-863-7280 Fax: 802-951-1275 Email: shayla.livingston@vermont.gov.

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

- Health Benefits Eligibility and Enrollment Rule, General Provisions and Definitions (Part 1).- **21P005**
- Health Benefits Eligibility and Enrollment Rule, Financial Methodologies (Part 5). - **21P006**
- Health Benefits Eligibility and Enrollment Rule, Eligibility and Enrollment Procedures (Part 7). - **21P007**

- Health Benefits Eligibility and Enrollment Rule, State Fair Hearings and Expedited Eligibility Appeals (Part 8). - **21P008**

AGENCY: Agency of Human Services

CONCISE SUMMARY: This proposed rulemaking amends Parts 1, 5, 7 and 8 of the 8-part Health Benefits Eligibility and Enrollment (HBEE) rule. Parts 1, 5 and 7 were last amended effective January 15, 2019. Part 8 was last amended effective July 1, 2019. The majority of changes result from the transitioning of Qualified Health Plan (QHP) premium processing functions from AHS to QHP issuers, as contemplated in 2018 1 (Sp. Sess.) Acts and Resolves No. 11, Sec. C.102(a)(3).

FOR FURTHER INFORMATION, CONTACT: Danielle Fuoco, Agency of Human Services, 280 State Drive, Center Building, Waterbury, Vermont 05671-1000 Tel: 802-585-4265 Fax: 802-241-0405 Email: danielle.fuoco@vermont.gov URL: <https://humanservices.vermont.gov/rules-policies/health-care-rules>

FOR COPIES: Jessica Ploesser, Agency of Human Services, 280 State Drive, NOB 1 South, Waterbury, VT 05671 Tel: 802-241-0454 Fax: 802-241-0450 E-Mail: jessica.ploesser@vermont.gov.

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

- Home Health Services **21P009**
- Durable Medical Equipment **21P010**
- Medical Supplies **21P011**
- Applied Behavior Analysis Services **21P012**

AGENCY: Agency of Human Services

CONCISE SUMMARY: The proposed rules set forth the criteria for coverage and service delivery for Health Care Administrative Rules (HCAR) including a new rule for Applied Behavior Analysis Services, and amended rules for Home Health Services, Durable Medical Equipment, and Medical Supplies under Vermont's Medicaid program. The revisions are designed to improve public accessibility and comprehension of the rules concerning the operation of Vermont's Medicaid program.

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