

Adopted 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:

Children's Personal Care Services

/s/ Todd W. Daloz _____, on 3/13/24
(signature) (date)

Printed Name and Title:

Todd W. Daloz

Deputy Secretary

Agency of Human Services

RECEIVED BY: _____

- ☐ Coversheet
- ☐ Adopting Page
- ☐ Clean text of the rule (Amended text without annotation)
- ☐ Letter regarding changes to the final proposed

1. TITLE OF RULE FILING:

Children's Personal Care Services

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

23P038

3. ADOPTING AGENCY:

Vermont Department of Health

4. 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:

5. 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)

6. THE FILING HAS CHANGED SINCE THE FILING OF THE FINAL PROPOSED RULE.

7. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE, INCLUDING CHANGES IN ECONOMIC IMPACT.

8. THE LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES DID NOT OBJECT TO THE FINAL PROPOSAL.

9. PROCEDURAL HISTORY OF ADOPTION:

ICAR Filing: 8/23/2023

Proposal Filed with Office of the Secretary of State: 10/13/2023

Notices Posted Online: 10/18/2023

Notices Published in the Newspapers of Record: 10/26/2023

A Hearing WAS Held.

Hearings Held (*PLEASE USE ADDITIONAL SHEETS TO PROVIDE THE DATE, TIME, AND LOCATION OF ALL HEARINGS, IF THIS FORM IS INSUFFICIENT TO LIST ALL HEARINGS HELD*):

Date: 12/12/2023

Time: 11:00 AM

Street Address: 108 Cherry St, Burlington VT Rm 2A

Zip Code: 05401

URL for Virtual: Or call in (audio only)

+1 802-828-7667,,309763284# United States, Montpelier

Phone Conference ID: 309 763 284#

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Date:

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Zip Code:

URL for Virtual:

Deadline for Public Comment: 12/29/2023

Final Proposal —

Filed with Secretary of State: 01/17/2024

Filed with LCAR: 01/17/2024

Dates of LCAR Review: 02/22/2024, , , ,

Adopted Rule —

Filed with Secretary of State: 03/04/2024

Filed with LCAR: 03/04/2024

10. EFFECTIVE DATE: 04/01/2024

(A RULE MAY TAKE EFFECT 15 DAYS AFTER ADOPTION IS COMPLETE OR AT A LATER TIME PROVIDED IN THE TEXT OF THE RULE SEE 3 V.S.A. §845(d) FOR DETAILS).

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:

Children's Personal Care Services

2. ADOPTING AGENCY:

Vermont Department of Health

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*):

October 1, 2008 Secretary of State Rule Log #08-040

To: Sarah Copeland Hanzas, Secretary of State
From: Natalie Weill, Public Health Policy Advisor for Vermont Department of Health
Re: 23P038 – Children’s Personal Care Services Rule
Date: March 11, 2024

Following the filing of the Children’s Personal Care Services Proposed Final Rule, the Department of Health made the following changes to the Final Adopted rule filing:

1. Section 4.233.1: **“Self-Directed”** means children’s personal care services that are managed ~~and employed~~ directly by the beneficiary, family member, guardian, or guardian's designee.

No further changes have been made to the rule.

Children's Personal Care Services

4.233 Children's Personal Care Services (04/1/2024, GCR # 23-131)

4.233.1 Definitions

For the purposes of this rule the term:

- (a) **"Activities of Daily Living"** (ADL) means activities including dressing, bathing, grooming, eating, transferring, mobility, and toileting.
- (b) **"Children's Personal Care Services"** (CPCS) means medically necessary services related to ADLs and IADLs that are furnished to a beneficiary, as part of Vermont Medicaid's Children's Personal Care Services Program.
- (c) **"Electronic Visit Verification"** (EVV) means a telephone and computer-based system that records information about the services provided.
- (d) **"Employer"** means the individual or entity who is responsible for the hiring of and ensuring payment to the personal care attendant when services are self-directed.
- (e) **"Functional Ability Screening Tool"** means a State adopted standardized assessment tool to assist in the determination of medical necessity for children's personal care services.
- (f) **"Instrumental Activities of Daily Living"** (IADL) means activities including personal hygiene, light housework, laundry, meal preparation, transportation, grocery shopping, using the telephone, medication management, and money management.
- (g) **"Legally Responsible Individual"** means the beneficiary's biological parent, stepparent, adoptive parent, legal guardian, spouse, or civil union partner.
- (h) **"Personal Care Attendant"** means an individual at least 18 years of age, who has successfully passed required background checks, and who is qualified to provide children's personal care services. A personal care attendant must not be a legally responsible individual.
- (i) **"Self-Directed"** means children's personal care services that are managed directly by the beneficiary, family member, guardian, or guardian's designee.
- (j) **"Variance"** means a decision by the Children's Personal Care Services Program to waive certain restrictions, including hiring a personal care attendant less than 18 years old, waiving certain background check findings, and paying greater than the maximum wage established.

4.233.2 Covered Services

- (a) Covered children's personal care services must be medically necessary and may include:
 - (1) Assistance with bathing, dressing, grooming, bladder, or bowel requirements,
 - (2) Assistance with eating, drinking, feeding, or dietary activities,
 - (3) Assistance in monitoring vital signs,
 - (4) Routine skin care,

Children's Personal Care Services

- (5) Assistance with positioning, lifting, transferring, ambulation, and exercise,
 - (6) Set-up, supervision, cueing, prompting, and guiding, when provided as part of the assistance with ADLs,
 - (7) Assistance with age appropriate IADLs that are essential to the beneficiary's care at home,
 - (8) Assistance with taking medications,
 - (9) Assistance with the use of durable medical equipment including adaptive or assistive devices, and
 - (10) Accompanying the recipient to clinics, physician office visits, or other trips which are medically necessary.
- (b) Services must be individualized and be provided exclusively to the beneficiary.
 - (c) Children's personal care services can only be provided to one recipient at a time.

4.233.3 Eligibility for Care

- (a) To be eligible for children's personal care services a beneficiary must:
 - (1) Be under the age of 21,
 - (2) Have a medical condition, disability, or cognitive impairment as documented by a physician, psychologist, psychiatrist, physician's assistant, advanced practice registered nurse, licensed mental health clinician, or other licensed clinician working within their scope of practice.
 - (3) Qualify for medically necessary children's personal care services based on functional limitations in age-appropriate ability to perform ADLs, as prior authorized by the Children's Personal Care Services Program.
 - (4) Not be an inpatient or resident of a hospital, nursing facility, intermediate care facility for people with developmental disabilities, or institution for mental disease.

4.233.4 Prior Authorization

- (a) Services must be prior authorized by the Children's Personal Care Services Program.
- (b) The following is used to authorize the hours of children's personal care services:
 - (1) A Functional Ability Screening Tool assessment of age-appropriate ability to perform ADLs completed by a state sanctioned assessor, and
 - (2) Individualized clinical review of relevant supporting materials, description of direct observation, diagnosis verification, and a care plan. Clinical review is completed by a licensed clinician employed by the Agency of Human Services.
- (c) Re-determination authorizing eligibility is required for services in accordance with the following:
 - (1) Every twelve months from the initial authorization date through age 5,
 - (2) Changing to every 3 years, from the last authorization date, if the beneficiary has two consecutive years of the same evaluation outcome, or
 - (3) When there is a change in the beneficiary's ability to perform age-appropriate ADLs and IADLs.

Children's Personal Care Services

4.233.5 Qualified Providers

- (a) The following individuals are eligible to deliver children's personal care services through the Children's Personal Care Services Program:
 - (1) Personal care attendants, and
 - (2) Legally responsible individuals.

4.233.6 Conditions for Coverage

- (a) The coverage and conditions of this rule apply to services that are delivered outside of any personal care services authorized as a component of the Medicaid School Based Health Services Program in accordance with an Individual Education Plan (IEP).
- (b) A personal care attendant is eligible to deliver services when employed by a home health agency, other agency designated to furnish children's personal care services, or employed as a self-directed personal care attendant.
- (c) When children's personal care services are self-directed the following conditions apply:
 - (1) The employer must use the state sanctioned fiscal employer agent for payroll and administrative services.
 - (2) The employer may pay personal care attendants a flexible wage. The flexible wage must not be lower than the minimum wage, as established by the applicable Collective Bargaining Agreement between the State of Vermont and Vermont Homecare United, American Federation of State County and Municipal Employees Council 93 – Local 4802, or higher than the maximum wage published by the Children's Personal Care Program.
 - (3) A variance to pay greater than the maximum wage may be requested by an employer to the Children's Personal Care Services Program. Variance requests are determined by Children's Personal Care Services Program. Services must be provided in the most cost-effective manner possible. Different rates of pay may be paid to different personal care attendants providing services to the same beneficiary. The rate may be based on level of experience, specialized skills, shifts worked, and hiring needs determined by the employer.
 - (4) All services must be paid within the awarded amount. The awarded amount is based on the current Medicaid rate on file for the authorized hours of service. The current Medicaid rate is published on the Vermont Department of Health's website. Payments made above the Medicaid rate on file will result in the beneficiary receiving fewer authorized hours of service.
 - (5) The employer is responsible for paying the appropriate payroll taxes for a personal care attendant out of the awarded amount.
- (d) Legally responsible individuals may be compensated for delivering children's personal care services under the following conditions:
 - (1) The individual must provide an attestation to the Children's Personal Care Program that children's personal care services are unavailable from a personal care attendant due to significant and recurring barriers,
 - (2) The individual must provide an attestation to the Children's Personal Care Program that they are able to deliver the medically necessary children's personal care services to the beneficiary, and

Children's Personal Care Services

- (3) The individual must agree to use the state sanctioned fiscal employer agent for billing and administrative services.
- (4) Legally responsible individuals must be paid the current Medicaid rate on file, and not a flexible rate.
- (5) The individual must not be listed on the U.S. Health and Human Services Office of Inspector General, List of Excluded Individuals/Entities.
- (e) Personal care providers must use a Vermont Medicaid authorized Electronic Visit Verification system to collect the following information every time services are provided:
 - (1) Type of service performed,
 - (2) Date of service delivery,
 - (3) Start time and end time of service delivery,
 - (4) Location of service delivery,
 - (5) Name of the service provider, and
 - (6) Name of the beneficiary.
- (f) Personal care providers are not required to use the EVV system under the following conditions:
 - (1) When services are provided entirely outside of the beneficiary's home, or
 - (2) When the personal care provider lives in the home with the beneficiary.

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Waterbury, VT 05671-1000



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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".

DATE: March 7, 2024

SUBJECT: Signatory Authority for Purposes of Authorizing Administrative Rules

I hereby designate Todd Daloz, 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: Todd W. Daloz via Todd.Daloz@vermont.gov