

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:

Children's Personal Care Services

/s/ Todd W. Daloz _____, on 1/17/24
(signature) (date)

Printed Name and Title:

Todd W. Daloz
Deputy Secretary
Agency of Human Services

RECEIVED BY: _____

- ☐ Coversheet
- ☐ Adopting Page
- ☐ Economic Impact Analysis
- ☐ Environmental Impact Analysis
- ☐ Strategy for Maximizing Public Input
- ☐ Scientific Information Statement (if applicable)
- ☐ Incorporated by Reference Statement (if applicable)
- ☐ Clean text of the rule (Amended text without annotation)
- ☐ Annotated text (Clearly marking changes from previous rule)
- ☐ ICAR Minutes
- ☐ Copy of Comments
- ☐ Responsiveness Summary

1. TITLE OF RULE FILING:

Children's Personal Care Services

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

23P038

3. ADOPTING AGENCY:

Vermont Department of Health

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Natalie Weill

Agency: Department of Health

Mailing Address: 108 Cherry St, Burlington, VT 05401

Telephone: 802-863-7280 Fax: 802-951-1275

E-Mail: ahs.vdhrules@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<http://www.healthvermont.gov/about-us/laws-regulations/public-comment>

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: Brendan Atwood

Agency: Department of Health

Mailing Address: 108 Cherry St, Burlington, VT 05401

Telephone: 802-863-7282 Fax: 802-951-1275

E-Mail: ahs.vdhrules@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE, EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

3 V.S.A. § 801(b)(11); 33 V.S.A. § 1901(a)(1)

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

33 V.S.A. § 1901(a)(1) The Secretary of Human Services or designee shall take appropriate action, including making of rules, required to administer a medical assistance program under Title XIX (Medicaid) and Title XXI (SCHIP) of the Social Security Act.

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 and reimbursement for Children's Personal Care Services (CPCS) under Vermont's Medicaid program. This rule revises and replaces current Medicaid covered services rule 4.233.

The proposed amendments include the following:

1) Implements payment to legally responsible individuals for providing children's personal care services authorized under Vermont's Medicaid program. This was put in place as a temporary option during the public health emergency caused by COVID-19. It became a permanent option after the Vermont Medicaid program obtained the necessary 1115 Global Commitment to Health Waiver authority to continue payment to legally responsible individuals beyond the end of the public health emergency.

2) Implements the Electronic Visit Verification (EVV) tool for all CPCS providers as mandated by Medicaid through the 21st Century Cures Act.

3) Modifies the rule for clarity by defining program practices.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

The rulemaking is necessary to incorporate the 1115 Global Commitment to Health Waiver into rule giving Vermont Medicaid authority to pay legally responsible individuals. Additionally, EVV is mandated by federal statute, thus rulemaking is required to integrate and implement EVV.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

The rule is required to implement the 1115 Global Commitment to Health Waiver and the 21st Century Cures Act into rule.

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

Medicaid beneficiaries, legally responsible individuals as defined in the rule as the beneficiary's biological parent, stepparent, adoptive parent, legal guardian, spouse, or civil union partner.

Independent direct support workers referenced in the rule as personal care attendants (PCAs).

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

This rulemaking has a positive economic benefit to Medicaid beneficiaries and to legally responsible individuals. The amendments to the rule have no anticipated economic impact on independent direct support providers and to the Department of Vermont Health Access.

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: 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#

Find a local number | Reset PIN

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

12/29/2023

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

Medicaid

Health Care Administrative Rules

HCAR

Children's Personal Care Services

Legally Responsible Individual

Electronic Visit Verification

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

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:

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Vermont Department of Health

3. CATEGORY OF AFFECTED PARTIES:

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

Medicaid beneficiaries: This rulemaking has an economic benefit to Medicaid beneficiaries under the CPCS program. Allowing compensation to legally responsible individuals, including parents, means CPCS-eligible VT Medicaid beneficiaries will have increased access to medically necessary personal care services authorized under the Medicaid State Plan.

Legally responsible individuals (LRIs): This rulemaking has an economic benefit for LRIs. Without this rulemaking, LRIs would not be reimbursed for providing the medically necessary care to the beneficiary. Due to the end of the public health emergency, allowance for payment to LRIs for their services would end May 2023. Payments to LRIs are made at the Medicaid rate on file with the Department. Effective July 1, 2023, this rate is \$15 per hour. Legally responsible individuals may only be utilized under specific conditions, approved by the program, including the requirement that children's personal care services are unavailable from a personal care attendant due to significant and recurring barriers.

Independent direct support providers: There is no anticipated economic impact to independent direct service providers (PCAs). Despite expanding eligible qualified providers who may provide medically necessary personal care services authorized under the Medicaid State Plan, PCAs remain the prioritized provider to deliver these services.

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 anticipated economic 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.

Because there is no anticipated economic impact to local school districts, alternatives to ameliorate costs is not necessary.

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 anticipated economic 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.*

Because there is no anticipated economic impact, an explanation on ways a business can reduce cost burden is not necessary.

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 alternative to this rule, the Agency is directed by federal mandate to update the rule in line with federal standards.

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

The Department provided all relevant information available.

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:

Children's Personal Care Services

2. ADOPTING AGENCY:

Vermont Department of Health

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 is 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 is anticipated.

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

No impact is anticipated.

6. RECREATION: *EXPLAIN HOW THE RULE IMPACTS RECREATION IN THE STATE:*

No impact is anticipated.

7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*

No impact is anticipated.

8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*

No impact is anticipated.

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

Because there is no anticipated impact, this analysis is sufficient.

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:

Children's Personal Care Services

2. ADOPTING AGENCY:

Vermont Department of Health

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:

A public comment period and public hearing was held.

The rule was posted in newspapers and online.

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 rule was posted on the Global Commitment Register (GCR) for 30 days and one comment was received in support of the rule.

AHS notified Medicaid and the Exchange Advisory Committee (MEAC).



INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: October 9, 2023, virtually via Microsoft Teams

Members Present: Chair Sean Brown, Jared Adler, Jennifer Mojo, Diane Sherman, Michael Obuchowski, and Nicole Dubuque

Members Absent: John Kessler and Brendan Atwood

Minutes By: Melissa Mazza-Paquette

- 2:01 p.m. meeting called to order.
- Review and approval of [minutes](#) from the September 11, 2023 meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
- Note: The following emergency rules were supported by ICAR Chair Brown:
 - 'Emergency Administrative Rules for Notaries Public and Remote Notarization' by the Office of Professional Regulation, on 09/19/23
 - OPR seeks to renew the emergency rules to ensure notaries can provide remote notary public services while the permanent rules go through the APA rulemaking process. More permanent rules to implement Act 171 are drafted.
 - These Emergency Rules allow an individual to satisfy the "personal appearance" requirement for the performance of notarial acts by appearing before a notary public through a secure communication link using specific protocols and standards.
 - 'PUC Emergency Rule 2.500 COVID-19 Emergency Procedures' by the VT Public Utility Commission, on 09/25/23
 - Risk of exposure for members of the public and state agency staff to the COVID-19 virus established as a global pandemic by the World Health Organization as of March 11, 2020.
 - This emergency rule amends various filing and procedural requirements and provides alternative procedures to reduce or eliminate in-person contact between members of the public and Commission staff or other members of the public to reduce the risk of exposure to the COVID-19 virus. This is the seventh extension of the emergency rule filed in April 2020. A number of measures included in this revised emergency rule have proven beneficial to those who appear before and interact with the Commission. The Commission is undertaking a process of adopting policies and promulgating permanent rules, where appropriate, so that the remaining measures in this revised emergency rule could either be phased out or incorporated into permanent rules. The revisions in this version reflect adoption of permanent Commission Rule 2. Two other Commission rules modified by this rule have entered formal rulemaking. The provisions in this revised emergency rule will be superseded when the permanent rules take effect.
- No public comments.

- Presentation of Proposed Rules on pages 3-12 to follow:
 1. Residential Care Home and Assisted Living Residence Licensing Regulations, Agency of Human Services, Department of Disabilities, Aging, and Independent Living, page 3
 2. Independent School Program Approval Rules, State Board of Education, page 4
 3. Vermont Low Emission Vehicle and Zero Emission Vehicle Rules, Agency of Natural Resources, page 5
 4. Investigation and Remediation of Contaminated Properties Rule (IRule), Agency of Natural Resources, page 6
 5. Children's Personal Care Services, Agency of Human Services, Department of Health, page 7
 6. Rules of the Board of Medical Practice, Agency of Human Services, Department of Health, page 8
 7. Crisis Fuel Assistance Rules, Agency of Human Services, Department for Children and Families, Economic Services Division, page 9
 8. Seasonal Fuel Assistance Rules, Agency of Human Services, Department for Children and Families, Economic Services Division, page 10
 9. Rule Governing the Prescribing of Opioids for Pain, Agency of Human Services, Department of Health, page 11
 10. Council Rules, Vermont Criminal Justice Council, page 12
- No other business
- Next scheduled meeting is November 13, 2023 at 2:00 p.m.
- 3:54 p.m. meeting adjourned.

Proposed Rule: Children's Personal Care Services, Agency of Human Services, Department of Health
Presented By: Natalie Weill

Motion made to accept the rule as presented with no recommend changes by Nicole Dubuque, seconded by Jen Mojo, and passed unanimously.

DRAFT

Children's Personal Care Services

74064.233 Children's Personal Care Services ~~(10/29/2013, 13P016)~~

~~4.233~~7406.1 Definitions

~~As used in these regulations~~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-directedprovider.
- ~~(a)~~(e) **“Functional Ability Screening Evaluation Tool”** means a State adopted standardized assessment tool to assist in the determination of medical necessity for children's personal care services.
- ~~(b)~~(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.
- ~~(c)~~(g) **“Legally Responsible Individual”** means the beneficiary's biological parent, stepparent, adoptive parent, legal guardian, spouse, or civil union partner.
- ~~“Medical Necessity” shall have the same meaning as Section 7103 of this rule to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for people with developmental disabilities, or institution for mental disease.~~
- ~~(d)~~(h) **“Personal Care Attendant”** means an individual at least 18 years of age, having successfully passed required background checks, and who is qualified to providethe children's personal care services to a child. A personal care attendant must~~may~~ not be a biological or adoptive parent, guardian, shared living provider, foster parent, step parent, domestic/civil union partner of the child's primary caregiver, or a relative serving in the primary caregiver capacitylegally responsible individual.
- (i) **“Self-Directed”** means children's personal care services that are managed and employed directly by the beneficiary, family member, guardian, or guardian's designee.
- ~~(e)~~(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 ADLs, such as bathing, dressing, grooming, bladder, or bowel requirements,
 - (2) Assistance with eating, or drinking, feeding, or dietary and diet activities,
 - (3) Assistance in monitoring vital signs,
 - (4) Routine skin care,
 - (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 home management IADLs that are linked to ADLs, and are essential to the beneficiary's care at home,
 - (8) Assistance with taking medications management,
 - (9) Assistance with the use of durable medical equipment including adaptive or assistive devices when linked to the ADLs, and

~~(11)~~(10) Accompanying the recipient to clinics, physician office visits, or other trips which are medically necessary.

(b) Services shall must be individualized and shall be provided exclusively to the authorized individual beneficiary.

~~(b)(c)~~ Children's personal care services can only be provided to one recipient at a time. Payment for services shall not exceed the amount awarded.

~~(0) Prior authorization shall be required prior to the provision of personal care services. Services must be provided in the most cost effective manner possible.~~

4.233.3 ~~7406.3~~ Eligibility for Care Criteria

- (a) To be eligible for children's pPersonal cCare sServices a beneficiary child must:
- (1) Be under the age of 21, Have active Medicaid enrollment,
 - (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, practitioner or other licensed clinician and 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 Pprogram.
 - (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.

4.233.547406.5 Qualified Providers

(a) The following individuals are eligible to ~~may~~ deliver children's personal care services through the Children's Personal Care Services Program:-

- (1) Personal care attendants, and
- (2) Legally responsible individuals.

4.233.65 Conditions for Coverage

(a) The coverage and conditions of this rule ~~only~~ 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).

~~(a)(b)~~ A personal care attendant ~~is eligible to~~~~may be~~ deliver services when employed by a home health agencyies, nursing service agencyies, other agencyies designated to furnish children's personal care services, this service or employed as a self-directed personal care attendant directly by the recipient, family, guardian, or guardian's designee.

(c) When children's personal care services are self-directed the following conditions apply: ~~(known as self/family/surrogate directed services). In the case of self, family, or surrogate direction,~~

~~(1) the~~The employer must use the state-sanctioned fiscal employer agent for payroll and administrative services.

(1)

(2) The employer may pay pPersonal care attendants ~~may be paid~~a flexible wage. The flexible wage must not be lower than ~~between~~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, oer higher than the ~~and~~maximum wage published by the Children's Personal Care Program. ~~lower than the wage established by the current State of Vermont and the Vermont Homecare United American Federation of State County and Municipal Employee Council 93 – Local 4802, Collective Bargaining Agreement but may be reasonably higher.~~

(3) A variance to pay greater than the maximum wage -may be requested by an employer to the Children's Personal Care Services Program. ~~VUnreasonable variance requests are~~will determined by Children's Personal Care Services Program. ~~not be granted.~~ Services ~~shall~~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 website of the~~ Vermont Department of Health's website Vermont Health Access. ~~Payments made above the Medicaid rate on file will result in the beneficiary receiving fewer authorized hours of service. and may be found at <http://dvh.vermont.gov/> and is hereby incorporated by reference; or a flexible wage. The flexible wage shall not be lower than the current Medicaid rate on file but may be reasonably higher.~~

- ~~(5) The recipient, if an adult between the ages of 18 and 21, or his or her guardian, or the parent or guardian of a minor child, may select the personal care attendant's reasonable rate of pay. Different rates of pay may be paid to different personal care attendants providing services to the same child/beneficiary. The rate of pay may be based on level of experience, specialized skills, shifts worked, and hiring needs as determined by the employer.~~

- ~~(6)(5) Personal Care Attendant Wages and Payroll Taxes~~ The employer is responsible for paying the appropriate payroll taxes for a personal care attendant out of the awarded amount.

- ~~(b)(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

- ~~—~~ The individual must agree to use the state -sanctioned fiscal employer agent for billing and administrative services.

- (3)

- (4) Legally responsible individuals must be paid the current Medicaid rate on file, and not a flexible rate.

- ~~(4)~~ The individual must not be listed on the U.S. Health and Human Services Office of Inspector General, List of Excluded Individuals/Entities.

- ~~(2) A personal care attendant may provide personal care services to only one recipient at a time.~~

- (5)

- ~~(e) A variance may be authorized by the Children's Personal Care Services Program to waive certain requirements including hiring a personal care attendant 16-18 years old, or certain background check findings.~~

- (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.

~~7406.64.233.6 Prior Authorization Requirements~~Determination of Personal Care Services

~~Services must be prior authorized by the Children's Personal Care Services Program. The State shall from time to time adopt and designate for use a functional evaluation tool.~~

~~The following is used to authorize the hours of children's personal care services: The functional evaluation tool shall assist in measuring the level of assistance a recipient requires in activities of daily living and such instrumental activities of daily living linked to the recipient's ADLs.~~

~~A Functional Ability Screening Tool assessment of age appropriate ability to perform ADLs, and~~

~~(1) Individualized clinical review of relevant supporting materials, description of direct observation, diagnosis verification, and a care plan.~~

~~(a) Prior authorization rReevaluations will occur in accordance with the following:~~

~~(1) Annually through age 5;~~

~~(2) Changing to every 3 years if the beneficiarychild has two consecutive years of the same evaluation outcome, or~~

~~When there is a change in the beneficiary's child's ability to perform ADLs and IADLs.~~

Children's Personal Care Services

4.233 Children's Personal Care Services4.233.1 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, 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 and employed 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,
 - (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.

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
 - (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.



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: January 31, 2023

SUBJECT: Signatory Authority for Purposes of Authorizing Administrative Rules

I hereby designate Deputy Secretary of Human Services Todd W. Daloz as signatory to fulfill the duties of the Secretary of the Agency of Human Services as the adopting authority for administrative rules as required by Vermont's Administrative Procedure Act, 3. V.S.A § 801 et seq.

Cc: Todd W. Daloz