

Administrative Procedures – Proposed Rule Filing

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” (CVR 04-000-001) 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, the Legislative Committee on Administrative Rules and a copy with the Chair of the Interagency Committee on Administrative Rule.

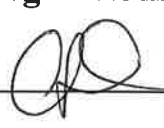
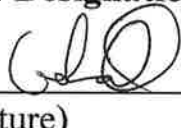
All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

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:

Regulations for the Designation and Operation of Home Health Agencies

 /  _____, on 9.19.18
(signature) (date)

Printed Name and Title:

Al Gobeille, 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)

1. TITLE OF RULE FILING:

Regulations for the Designation and Operation of Home Health Agencies

2. ADOPTING AGENCY:

Agency of Human Services (AHS); Department of Disabilities, Aging and Independent Living (DAIL)

3. PRIMARY CONTACT PERSON:

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

Name: Suzanne Leavitt

Agency: Department of Disabilities, Aging & Independent Living, Division of Licensing and Protection

Mailing Address: 280 State Drive, Waterbury, VT 05671

Telephone: 802 241 - 0346 Fax: 802 241 - 0343

E-Mail: suzanne.leavitt@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*: www.dail.vermont.gov

4. 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: Stuart G. Schurr, Esq.

Agency: Department of Disabilities, Aging & Independent Living, Commissioner's Office

Mailing Address: HC 2 South, 280 State Drive, Waterbury, VT 05671-2020

Telephone: 802 241 - 0353 Fax: 802 241 - 0386

E-Mail: stuart.schurr@vermont.gov

5. 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?) Yes

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

1 V.S.A. § 317 (c) (1); 33 V.S.A. § 6303

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

33 V.S.A. § 6303(a) provides that the Commissioner of Disabilities, Aging and Independent Living shall adopt by rule program standards for the purpose of providing quality oversight of home health agencies. The minimum

Proposed Rule Filing

program standards must include practices to ensure confidentiality of patient records.

6. 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).

33 V.S.A. § 6303

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

The Commissioner of Disabilities, Aging and Independent Living shall adopt by rule program standards for the purpose of providing quality oversight of home health agencies. The minimum program standards must include performance standards, quality indicators, grievance and complaint procedures, patient safety standards, consumer input mechanisms, accessibility standards, medical necessity standards, and practices to ensure confidentiality of patient records.

8. CONCISE SUMMARY (150 WORDS OR LESS):

This proposed rule amends the Regulations for the Designation and Operation of Home Health Agencies, which were last amended July 1, 2007. Given the extensive modifications to the existing Rule, AHS and DAIL are proposing a strike-all. The proposed rule seeks to address both technical and substantive issues. Examples of the former include re-organizing existing content and editing for enhanced clarity. Substantive changes include adding and deleting definitions; modifying definitions to replicate federal definitions where appropriate; modifying terminology; to avoid redundancy, deleting provisions that are required by the Federal Conditions of Participation (CoPs), with which all agencies must comply; and amending and clarifying the appeals provisions.

9. EXPLANATION OF WHY THE RULE IS NECESSARY:

The substantive changes are needed to align the State regulations with the Federal CoPs and to avoid redundancy. For example, the Federal CoPs, with which home health agencies must comply, address Licensed Practical Nurse Services, Licensed Nursing Assistant Services, Therapy Services, Medical social Services,

Proposed Rule Filing

Clinical Records, and Plan of Care. Accordingly, those sections have been deleted from the proposed rule. In addition, the proposed rule seeks to change the section currently titled, "Skilled Nursing Services" to "Skilled Services" to align with the Federal CoPs. Specifically, as the CoPs only require supervision by a Registered Nurse (RN) for skilled nursing, the home health agencies have requested the elimination of the current requirement of RN supervision for non-medical tasks.

10. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

The rule is needed to align the State designation requirements with the Federal CoPs. The rule is within the authority of the Commissioner of Disabilities, Aging and Independent Living, the expertise of the licensing agency, and is based on input received from a workgroup consisting of interested stakeholders, which focused on developing a rule to protect patient rights and enhance positive client outcomes.

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

All home health agencies in the state of Vermont;
Prospective and current patients served by the home health agencies;

Vermont Legal Aid, including the Long-Term Care Ombudsman Program; and

DAIL's Division of Licensing and Protection and its Adult Services Division.

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

AHS and DAIL anticipate that the proposed changes to the Regulations for the Designation and Operation of Home Health Agencies will have no economic impact, including no impact on the State's gross annualized budget in fiscal year 2019.

13. A HEARING IS SCHEDULED .

14. HEARING INFORMATION

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

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IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION NEEDED FOR THE NOTICE OF RULEMAKING.

Date: 11/14/2018

Time: 01:00 PM

Street Address: Waterbury State Office Complex, Cherry
Conference Room A, 280 State Drive, Waterbury, VT

Zip Code: 05671

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

15. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING): 11/21/2018

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

designation

home health agencies

skilled services

patient rights

appeals

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:

Regulations for the Designation and Operation of Home Health Agencies

2. ADOPTING AGENCY:

Agency of Human Services (AHS); Department of Disabilities, Aging and Independent Living (DAIL)

3. AGENCY REFERENCE NUMBER, IF ANY:

4. 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 **AN AMENDMENT OF AN EXISTING RULE** .

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

Adopted Rule Filing

SOS Log # 07-014, Designation and Operation of Home Health Agencies, Effective July 1, 2007.

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.

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Agency of Human Services (AHS); Department of Disabilities, Aging and Independent Living (DAIL)

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:

Categories of potentially affected people and entities:

All home health agencies in the state of Vermont;

Prospective and current patients served by the home health agencies;

Vermont Legal Aid, including the Long-Term Care Ombudsman Program; and

Economic Impact Analysis

DAIL's Division of Licensing and Protection and its Adult Services Division.

Anticipated costs and benefits of this rule:

AHS and DAIL anticipate that the proposed changes to the Regulations for the Designation and Operation of Home Health Agencies will have no economic impact, including no impact on the State's gross annualized budget in fiscal year 2019. The proposed changes ensure alignment of these rules with state law and the Federal Conditions of Participation.

4. IMPACT ON SCHOOLS:

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

No impact.

5. ALTERNATIVES: *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

Not applicable.

6. IMPACT ON SMALL BUSINESSES:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

No impact.

7. SMALL BUSINESS COMPLIANCE: *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

Not applicable.

8. COMPARISON:

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

There are no alternatives to the adoption of this rule. This rule is needed to fulfill the mandate in 33 V.S.A. § 6303, which requires the adoption of minimum program standards for the purpose of providing quality oversight of home health agencies, to align the State

Economic Impact Analysis

regulations with the Federal CoPs, and to avoid redundancy.

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

DAIL has analyzed and evaluated the anticipated costs and benefits to be expected from the adoption of these rules, including the costs and benefits for each category of persons and entities described in #3 above. There are no alternatives to the adoption of this rule; it is needed to align the State regulations with the Federal CoPs and to avoid redundancy.

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

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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:

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2. ADOPTING AGENCY:

Agency of Human Services (AHS); Department of Disabilities, Aging and Independent Living (DAIL)

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

A public hearing is scheduled for November 14, 2018. Copies of the proposed rule will be provided to interested parties.

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

A group of interested stakeholders, consisting of those listed in #5 below, met monthly for approximately eighteen (18) months to develop this proposed rule. Once filed, at least one public hearing will be held, and there will be ample opportunity for submission of public comment.

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

Representatives of the Assembly of Home Health Agencies in the state of Vermont;

Representatives of independent Home Health Agencies

Prospective and current patients served by the home health agencies;

Representatives of Vermont Legal Aid, including the Long-Term Care Ombudsman Program; and Staff within DAIL's Division of Licensing and Protection and its Adult Services Division.