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*Kristin L. Clouser, Secretary*

## INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) AGENDA Monday, October 9, 2023, 2:00 p.m.

To attend virtually via Microsoft Teams, please [click here to join the meeting](#) for full meeting audio and visual. If you require a call-in option to participate (e.g., computer does not have a microphone), dial 802-828-7667 and enter Phone Conference ID: 106 522 523#.

Physical meeting location suspended until July 1, 2024 due to [Open Meeting Law temporary provisions](#).

- Welcome
- Review and approval of the [minutes](#) from the September 11, 2023 meeting
- Note any additions or deletions from the agenda
- 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.

- Public comment
- Presentation of the following proposed rules:
  - 1) Residential Care Home and Assisted Living Residence Licensing Regulations, Agency of Human Services, Department of Disabilities, Aging, and Independent Living
    - a) The Residential Care Home (RCH) and Assisted Living Residence (ALR) Regulations, last adopted in 2000 and 2003, respectively, were developed for residents who needed lower levels of assistance, who were simply unable to live independently. Since then, Vermonters, and people in general, have tended to stay in their homes longer and enter into residential care or assisted living with higher and more complex care needs. Ownership structures have also changed. In addition to a general shift in use of group care settings, the Choices for Care (CFC) and Enhanced Residential Care (ERC) programs have placed hundreds of nursing home level of care residents into these homes. The regulations did not provide the protections needed for a population that has increased and complex care needs, and they were not providing the guidance to the managers of these homes in how to provide safe care to residents, including those who need nursing home level of care.
  - 2) Independent School Program Approval Rules, State Board of Education
    - a) The proposed amendments to Rule Series 2200 are designed to incorporate the principles of 2019 Act No.1 to be consistent with legislative intent of both the Act and 16 V.S.A. §§ 164(14) and 166(b). These amendments also establish a method for recognizing school accrediting agencies, create an annual compliance assurance requirement for approved schools, require a method for evaluating whether an approved school is compliant with nondiscrimination requirements, clarify the process for accredited and non-accredited schools to apply and become approved, and reorganize the order of the rules for clarity and to align sequentially with the steps for school approval and reapproval.
  - 3) Vermont Low Emission Vehicle and Zero Emission Vehicle Rules, Agency of Natural Resources
    - a) ANR proposes to amend its existing Low Emission Vehicle and Zero Emission Vehicle Rules, which incorporate by reference California's Heavy-Duty Engine and Vehicle Omnibus (HD Omnibus), a motor vehicle emission standard regulation. The HD Omnibus regulation sets standards for emissions of nitrogen oxides (NOx) and particulate matter (PM) from on-road heavy-duty engines used in vehicles delivered for sale in Vermont, which help protect public health and air quality. In this rulemaking, ANR proposes to amend the current HD Omnibus regulation to (1) clarify the existing transit bus exemption, (2) adjust the vehicle model year in which vehicle manufacturers can begin earning early compliance credits, and (3) add the legacy engine provisions that will provide engine manufacturers greater compliance flexibility for vehicle model year 2026, while maintaining the originally projected emissions reductions and public health benefits under the HD Omnibus regulation. See attached Technical Support Document.
  - 4) Investigation and Remediation of Contaminated Properties Rule (IRule), Agency of Natural Resources
    - a) The Rule established standards and requirements for the investigation and remediation of releases of hazardous materials, and to provide a process which must be utilized for all properties where releases have occurred in a manner that is protective of public health and the environment. The Rule provides the process that must be followed from initial investigation of contaminated properties to final cleanup, remediation, and site closure for contaminated properties.
  - 5) Children's Personal Care Services, Agency of Human Services, Department of Health



- a) 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.
- 6) Rules of the Board of Medical Practice, Agency of Human Services, Department of Health
  - a) The proposed rulemaking primarily responds to statutory changes, but also reflect revisions to Board policy.
    - 1) 26 V.S.A. § 3061 creates two new forms of health care credentials, telehealth license and telehealth registration. This rulemaking implements these new credentials.
    - 2) The public health emergency disrupted access to the testing required to become a Vermont physician. Delayed access caused some applicants to exceed established time limitations. This rulemaking extends the time limit for applicants affected by the disruption.
    - 3) Act 38 (2023) revised supervision and practice location requirements for radiologist assistants (RAs). This rulemaking aligns the rule with statutory changes.
    - 4) 26 V.S.A. § 1377 authorizes the Board, through rulemaking, to offer licensees a nondisciplinary financial penalty option for a violation of purely an administrative nature (e.g., failure to maintain a current address with the Board).
    - 5) Modifies the rule for clarity and consistency with Board practices.
- 7) Crisis Fuel Assistance Rules, Agency of Human Services, Department for Children and Families, Economic Services Division
  - a) The amended rule reorganizes, renumbers, and replaces the existing rule. The amendment only addresses crisis fuel assistance and removes sections relating to seasonal fuel assistance, which will be addressed in a revised and separate rule. The amendment clarifies some existing practices and changes other practices to implement recent federal guidance and significant statutory changes that have occurred since the rule was last amended in 2009. Substantive changes include: new limits on the number of crisis benefits issued during a heating season, removing asset and resource requirements, new procedures for income calculation such as removing income deductions, new verification and residency requirements, and revised income-eligibility requirements. The amendment further clarifies the types of living arrangements and residential structures eligible for assistance.
- 8) Seasonal Fuel Assistance Rules, Agency of Human Services, Department for Children and Families, Economic Services Division
  - a) The amended rule reorganizes, renumbers, and replaces the existing rule. The amendment only addresses seasonal fuel assistance and removes sections relating to crisis fuel assistance, which will be addressed separately in a new rule. The amendment clarifies some existing practices and changes other practices to implement recent federal guidance and significant statutory changes that have occurred since the rule was last amended in 2009. Substantive changes include: new procedures for issuing one-time additional benefits during a heating season, removing certification requirement for suppliers of firewood and wood pellets, removing asset and resource requirements for applicants, new procedures for income calculation such as removing income deductions, new verification and residency requirements, and revised income-



eligibility requirements. The amendment further clarifies the types of living arrangements and residential structures eligible for assistance.

- 9) Rule Governing the Prescribing of Opioids for Pain, Agency of Human Services, Department of Health
    - a) This rulemaking replaces "naloxone" with "opioid antagonist" to allow for a broader range of medications that can be co-prescribed with opioids when required.
  - 10) Council Rules, Vermont Criminal Justice Council
    - a) The Rules subcommittee of the Vermont Criminal Justice Council has reorganized and edited the Rules so that the Rules are easier to navigate, align with current statutory requirements, and are adaptable as the Council moves into a three-year curriculum review. The Council approved the proposed Rules on August 2, 2023
- Other business
  - Next meeting date: Monday, November 13, 2023 at 2:00 p.m.
  - Adjournment

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