

1. TITLE OF RULE FILING:

At Home COVID-19 Antigen Test Coverage

2. ADOPTING AGENCY:

Department of Financial Regulation

3. PRIMARY CONTACT PERSON:

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

Name: Sebastian Arduengo

Agency: Department of Financial Regulation

Mailing Address: 89 Main Street, Montpelier, VT 05620-0301

Telephone: 802 828 - 4856 Fax: 802 828 - 5593

E-Mail: Sebastian.Arduengo@vermont.gov

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

<https://dfr.vermont.gov/about-us/legal-generalcounsel/proposed-rules-and-public-comment>

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: Gavin Boyles

Agency: Department of Financial Regulation

Mailing Address: 89 Main Street, Montpelier, VT 05620 3101

Telephone: 802 272 - 2338 Fax: 802 828 - 1919

E-Mail: Gavin.Boyles@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?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

This Emergency Rule does not include a records exemption.

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

This Emergency Rule does not include a records exemption.

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).

This rule is issued under the authority vested in the Commissioner of Financial Regulation by Act 6 of 2021, section 8.

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

Act 6 of 2021, section 8, requires the Commissioner to consider adopting and gives the Commissioner authority to adopt emergency rules to, among other things, expand health insurance coverage for, and waive or limit cost-sharing requirements directly related to, COVID-19 diagnosis, treatment, and prevention.

Act 6 further gives the Commissioner authority to adopt the emergency rule until March 31, 2022 notwithstanding the requirements of the Vermont Administrative Procedures Act.

8. CONCISE SUMMARY (150 WORDS OR LESS):

The emergency rule requires health insurers to waive or limit certain cost-sharing requirements directly related to COVID-19 antigen tests (commonly referred to as “rapid” tests), including over-the counter tests for use at home.

9. EXPLANATION OF WHY THE RULE IS NECESSARY:

On November 26, 2021, the World Health Organization (WHO) designated the Omicron variant of COVID-19 as a variant of concern. The Omicron variant has several mutations that may affect how easily it spreads in the community or the severity of illness it causes.

With the recent surge of cases following family gathering during the Thanksgiving holiday and spread of the Omicron variant within the United States, increased testing to help curtail the spread of COVID-19 is critical. Eliminating financial barriers to COVID-19 testing continues to be an important component to Vermont’s COVID-19 response as it encourages people to regularly get tested and to seek early medical care in the event of a positive test.

10. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY AS DEFINED IN 3 V.S.A. § 801(b)(13(A):

The Emergency Rule is not arbitrary because required coverage is limited to at home rapid tests authorized for emergency use by the Food and Drug Administration (FDA) .

Vermont was one of the first states requiring commercial insurers to cover the costs of polymerase chain reaction (PCR) testing and continues to be one of the only states to require that health insurers waive member cost-sharing for COVID-19 treatment. The Emergency Rule is a continuation of that policy and it is important to implement it in advance of the upcoming Christmas and New Year holidays to encourage the use of at home tests before holiday gatherings.

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

The Emergency Rule primarily affects health insurers, pharmacy benefit managers, and members of health insurance plans.

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

The Department anticipates that the Emergency Rule will provide substantial financial relief to Vermonters who require access to home testing in advance of the Winter holidays.

As we approach plan year 2022, Vermont's regulated health insurers are in a strong financial position, and this Emergency Rule is not expected to have a material effect on solvency or ability to pay claims.

More information on the overall impact of COVID-19 on the health insurance market may be found on the Department's website:

https://dfr.vermont.gov/sites/finreg/files/doc_library/dfr-report-financial-impacts-covid-health-insurance.pdf

13. A HEARING IS NOT SCHEDULED .

14. 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 NEEDED FOR THE NOTICE OF RULEMAKING.

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):
12/07/2021

16. EMERGENCY RULE EFFECTIVE: 12/07/2021

17. EMERGENCY RULE WILL REMAIN IN EFFECT UNTIL
(A DATE NO LATER THAN 180 DAYS FOLLOWING ADOPTION OF THIS EMERGENCY RULE):
03/31/2022

18. NOTICE OF THIS EMERGENCY RULE SHOULD NOT BE PUBLISHED IN THE WEEKLY NOTICES OF RULEMAKING IN THE NEWSPAPERS OF RECORD.

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

Health Insurance

COVID-19

Testing

At-home

Pharmacy

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.

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2. **ADOPTING AGENCY:**

Department of Financial Regulation

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*):

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.

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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:

The Department anticipates that the Emergency Rule will provide substantial financial relief to Vermonters. The amount saved will vary greatly depending on individual utilization, available supply, and the COVID-19 infection rate in Vermont.

Vermont Medicaid estimates a cost of approximately \$270,000 to implement a COVID-19 at-home testing benefit for Medicaid members, and the Department anticipates a similar cost to commercial health insurers for the commercial population. Because there is no currently available data on use of COVID-19 at-home testing and the course of the pandemic continues to be unprecedented and unpredictable, cost estimates for services related to COVID-19 will be highly variable.

The Department also anticipates that the capacity reduction recently announced by the UVM Health Network to stand up more ICU space will reduce utilization and thus overall health care expenditures similar to the reduction of in-person services in the Spring of 2020, particularly with respect to high-cost elective surgical procedures.

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:

The Department does not anticipate that the Emergency Rule will have an impact on schools.

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 the Department does not anticipate that the Emergency Rule will have an impact on schools, no alternatives were considered to reduce or ameliorate costs to local school districts while still achieving the objective of the Emergency Rule.

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):

None.

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.

Only health insurers are required to comply with the Emergency Rule; these entities are not small businesses.

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:

On December 2, 2021, the Biden administration announced that the federal government would issue guidance by January 15, 2022 stating that individuals that purchase at home rapid tests for COVID-19 will be able to seek reimbursement from their health insurer and have insurance cover the cost during the federal public health emergency.

The Department therefore considered simply waiting for the federal guidance to come into effect in January. In light of the upcoming Christmas and New Years holidays, however, the Department believes that it is critically important to ensure that Vermonters are encouraged to use and have access to at home rapid tests for COVID-19 well in advance of holiday gatherings.

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

In the context of the Department's continuing response to COVID-19, the analysis described herein is sufficient to enact the Emergency Rule. The cost of the substantive changes are minimal, but will provide a substantial benefit to consumers.

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

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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.):*

None .

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.):*

None .

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

None .

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

None .

7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*
None.
8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*
None.
9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*
The emergency rule is not expected to have any environmental impacts. Therefore, 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:

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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:

In drafting the emergency rule, the Department solicited input from a broad array of stakeholders, including Blue Cross Blue Shield of Vermont, MVP Health Care, Cigna, the Health Care Advocate, Vermont Pharmacists Association, and Vermont Retail Druggists. Prior to filing the Emergency Rule, the Department had follow-up communications with Blue Cross Blue Shield of Vermont, Cigna, the Health Care Advocate, and Vermont Pharmacists Association.

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

Blue Cross Blue Shield of Vermont, MVP Health Care, Cigna, the Health Care Advocate, Kinney Drugs, Vermont Pharmacists Association, and Vermont Retail Druggists.

Incorporation by Reference

THIS FORM IS ONLY REQUIRED WHEN INCORPORATING MATERIALS BY REFERENCE. PLEASE REMOVE PRIOR TO DELIVERY IF IT DOES NOT APPLY TO THIS RULE FILING:

Instructions:

In completing the incorporation by reference statement, an agency describes any materials that are incorporated into the rule by reference and how to obtain copies.

This form is only required when a rule incorporates materials by referencing another source without reproducing the text within the rule itself (e.g. federal or national standards, or regulations).

Incorporated materials will be maintained and available for inspection by the Agency.



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3. DESCRIPTION (*DESCRIBE THE MATERIALS INCORPORATED BY REFERENCE*):

This rule incorporates the following laws and regulations of the United States and the State of Vermont: Title 18 V.S.A., section 9402.

4. FORMAL CITATION OF MATERIALS INCORPORATED BY REFERENCE:

18 V.S.A. § 9402.

5. OBTAINING COPIES: *EXPLAIN WHERE THE PUBLIC MAY OBTAIN THE MATERIAL(S) IN WRITTEN OR ELECTRONIC FORM, AND AT WHAT COST*):

All of the cited materials are available online at the following links:

Vermont Statutes Annotated:

<https://legislature.vermont.gov/statutes/>

Although all cited materials are readily available online, members of the public may obtain printed copies by contacting the Department by phone at 802-828-3301.

6. **MODIFICATIONS** (*PLEASE EXPLAIN ANY MODIFICATION TO THE INCORPORATED MATERIALS E.G., WHETHER ONLY PART OF THE MATERIAL IS ADOPTED AND IF SO, WHICH PART(S) ARE MODIFIED*):

No modifications have been made to the cited material.

Run Spell Check

VERMONT DEPARTMENT OF FINANCIAL REGULATION

EMERGENCY RULE H-2021-02-E

AT HOME COVID-19 ANTIGEN TEST COVERAGE

Section 1. Background and Purpose.

- (a) This emergency rule is adopted under Act 6 of 2021.
- (b) The purpose of this emergency rule is to expand health insurance coverage for and waive or limit certain cost-sharing requirements directly related to COVID-19 antigen tests (commonly referred to as “rapid” tests), including over-the counter tests for use at home.
- (c) This emergency rule is not intended to affect payment or cost-sharing related to COVID-19 (SARS-CoV-2) testing covered by Emergency Rule H-2021-01-E.

Section 2. Definitions.

Terms used in this emergency rule shall have the meanings given to such terms, if any, in 18 V.S.A. § 9402.

Section 3. Coverage of COVID-19 Antigen Tests.

- (a) Coverage of COVID-19 (SARS-CoV-2) Antigen Tests. Health insurers shall process all eligible claims for retail purchase of FDA-authorized SARS-CoV-2 antigen test kits without member cost-sharing through the pharmacy benefit. The test kits are to be used by the member in a home setting.
- (b) Eligible Claims. Health insurers shall process claims for SARS-CoV-2 antigen test kits in a manner consistent with subsection (a) of this section when:
 - (1) prescribed prior to purchase by a participating provider, including retail pharmacists, working within their scope of practice; or
 - (2) presented with a valid member claim form describing services listed in subsection (a) of this section and proof of purchase. A retail receipt shall be acceptable proof of purchase.
- (c) Limitation. Coverage of SARS-CoV-2 antigen testing under subsection (a) of this section shall be limited to eight (8) test kits of no more than two (2) tests each per covered life per month. Members may obtain tests on behalf of dependents. Tests shall be for at home personal use and not for resale.

Section 4. Claims Retroactivity.

Health insurers shall process and reimburse appropriate claims for services described in this Emergency Rule retroactively to a date no later than December 1, 2021.

Section 5. Severability.

If any provision of this emergency rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provisions to other persons or circumstances shall be not affected thereby.

Section 6. Conflict with Federal Law.

Nothing in this emergency rule is intended to or should be construed to be in conflict with federal law.

Section 7. Effective Dates.

This emergency rule shall become effective on adoption and, pursuant to the authority granted in Act 6 of 2021 (§ 8), shall remain in effect until March 31, 2022.