PROPOSED RULE # _____.

Proposed Filing - Coversheet

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 and enclosures with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms shall be submitted to 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 Proposed Filing Coversheet will be used to generate a notice of rulemaking in the portal of "Proposed Rule Postings" online, and the newspapers of record. 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:

GUIDELINES FOR DISTINGUISHING BETWEEN PRIMARY AND SPECIALTY MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

_____ , on _____

(signature) (date)

Printed Name and Title:

Kevin Gaffney, Comissioner, Department of Financial Regulation

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 Filing Confirmed

1. TITLE OF RULE FILING:
   GUIDELINES FOR DISTINGUISHING BETWEEN PRIMARY AND SPECIALTY MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
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: E. Sebastian Arduengo
Agency: Department of Financial Regulation
Mailing Address: 89 Main St, Montpelier, VT 05620
Telephone: 802-828-4846 Fax: 802-828-5593
E-Mail: Sebastian.Arduengo@vermont.gov
Web URL *(WHERE THE RULE WILL BE POSTED)*: www.dfr.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: Anna Van Fleet
Agency: Department of Financial Regulation
Mailing Address: 89 Main St, Montpelier, VT 05620
Telephone: 8028284843 Fax:
E-Mail: anna.vanfleet@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:

PLEASE SUMMARIZE THE REASON FOR THE 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).
Act 171 of 2012, Section 11e
7. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

Act 171 of 2012, Section 11e, directs the Department of Financial Regulation to adopt rules establishing the guidelines for distinguishing between primary and specialty mental health services, taking into account recommendations received from stakeholders within the mental health community.

8. CONCISE SUMMARY **(150 WORDS OR LESS)**:

The rule prescribes guidelines for distinguishing between "primary" and "specialty" mental health and substance abuse services. This revision designates interprofessional consulting and peer support services as "primary" mental health and substance abuse services and makes technical and stylistic changes to the rule.

9. EXPLANATION OF WHY THE RULE IS NECESSARY:

All fully-insured health insurance plans in Vermont distinguish between "primary" and "specialty" care for the purpose of determining member cost-sharing. Primary care services typically have lower cost-sharing than specialty services.

The current rule requires the Department, in consultation with stakeholders, to determine any appropriate changes to the services and related codes in "Primary Care Mental Health and Substance Abuse Procedure Codes" every two years. It further states that any "addition or deletion of services shall require amendment of this rule." The list of "Primary Care Mental Health and Substance Abuse Procedure Codes" in the rule has not been updated since 2013.

In 2023, after outreach and consultation with stakeholders, a consultant contracted by the Department to examine mental health equity recommended updating "Primary Care Mental Health and Substance Abuse Procedure Codes" to include codes for interprofessional consulting and peer support services.

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

Adding interprofessional consulting to the list of "Primary Care Mental Health and Substance Abuse Procedure Codes" accounts for the reality of providers and staff spending an increasing amount of time engaging with technology and other practitioners to

consult and/or coordinate care. This is true of specialty providers who are consulted on cases or care from general practitioners or other practitioners outside of the specialty field who need support to manage a patient or to create a referral to the next level of care or practitioner.

Similarly, adding peer support services to the list of "Primary Care Mental Health and Substance Abuse Procedure Codes" improves patient outcomes in mental health and substance abuse according to research. Peer support is a valid support, utilized more commonly in mental health and substance abuse services.

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

Department of Financial Regulation, Department of Mental Health, Department of Vermont Health Access, Blue Cross Blue Shield of Vermont, MVP Health Care, CIGNA, University of Vermont Health Network, Bi-State Primary Care, Federally Qualified Health Centers, Rural Health Centers, Vermont Psychiatric Association, the Vermont Psychological Association, designated Mental Health Agencies, practicing licensed mental health counselors, licensed clinical social workers, and licensed master's level psychologists.

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

The rule will change member co-payments for mental health and substance abuse services designated as "primary" when rendered by a mental health care provider. These co-payments are no greater than the member co-pay applicable to medical services rendered by a primary care provider.

13. A HEARING WILL BE SCHEDULED.

IF A HEARING WILL NOT BE SCHEDULED, PLEASE EXPLAIN WHY.

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: 2/12/2025

Time: 10:00 AM

Street Address:
Zip Code:
URL for Virtual:

Date:
Time: AM
Street Address:
Zip Code:
URL for Virtual:

Date:
Time: AM
Street Address:
Zip Code:
URL for Virtual:

Date:
Time: AM
Street Address:
Zip Code:
URL for Virtual:

---

15. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING): 2/21/2025
16. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

health insurance
mental health
primary care
equity
parity

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:
   GUIDELINES FOR DISTINGUISHING BETWEEN PRIMARY AND SPECIALTY MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
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 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)*:

   13P08; Guidelines for Distinguishing Between Primary and Specialty Mental Health and Substance Abuse Services; May 22, 2013.

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:

   GUIDELINES FOR DISTINGUISHING BETWEEN PRIMARY AND SPECIALTY MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

2. ADOPTING AGENCY:

   Department of Financial Regulation

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:

   Department of Financial Regulation: Negligible additional costs pertaining to stakeholder outreach and enforcement.

   Department of Mental Health; Department of Vermont Health Access: Negligible additional costs pertaining to stakeholder outreach.

Blue Cross Blue Shield of Vermont; MVP Health Care; CIGNA: Academic literature on the cost impact of member cost-sharing suggests that "higher cost-sharing has an overall neutral to negative impact on total costs." (https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10394195/). Reducing or eliminating member cost-sharing either decreases or has no impact on total costs.

University of Vermont Health Network: Bi-State Primary Care; Federally Qualified Health Centers; Rural Health Centers; Vermont Psychiatric Association; the Vermont Psychological Association; designated Mental Health Agencies; practicing licensed mental health counselors, licensed clinical social workers; and licensed master's level psychologists: Because distinctions between "primary" and "speciality" services affect member cost-sharing, not provider reimbursement, there will not be any economic impact on providers and provider groups.

Consumers: Consumers accessing mental health services subject to this rule will have reduced out of pocket expenses. Studies show that reducing or eliminating cost-sharing requirements increase adherence to treatment and improve health outcomes. (https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10394195/)

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:

None anticipated.

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 any impact to local school districts, alternatives to the rule that could reduce or ameliorate costs to local school districts were not considered.

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 anticipated.

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 the proposed revisions to this Rule will not impact small businesses, the Department did not consider ways that a business could reduce the cost/burden of compliance.

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:
   Academic medical literature has long recognized that high patient cost-sharing "appears to dissuade patients from seeking care for serious symptoms, problems for which most physicians would agree that seeking care is appropriate."
   (https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1446896/)

   Leaving the list of "Primary Care Mental Health and Substance Abuse Procedure Codes" static would therefore potientially dissuade individuals from taking advantage of developments in mental health and substance use disorder practice and treatment since 2013 to the extent those services are subject to more expensive "specialty" cost-sharing tiers.

   As noted by the U.S. Department of Health and Human Services:
   "As addiction has become increasingly recognized as a chronic condition, the treatment of SUDs has shifted towards a recovery oriented, coordinated chronic care approach. Peer recovery support services (PRSS) are provided by peer coaches who use their lived experience of recovery from addiction to assist others in initiating and maintaining recovery. Integrating PRSS as a part of SUD treatment has been associated with

improved outcomes, including decreased substance use and increased abstinence." (https://effectivehealthcare.ahrq.gov/sites/default/files/nt_docs/prss-adults-topic-brief.pdf)

Likewise, in 2023, the Centers for Medicare & Medicaid Services (CMS) reversed its previous policy prohibiting coverage and payment of interprofessional consultation as a distinct service. (https://www.medicaid.gov/federal-policy-guidance/downloads/sho23001.pdf) In making its determination, CMS noted a scarcity of mental health providers "severely limits access to mental health and substance use disorder treatment," and cited studies showing that "increased integration and care coordination through collaborative care approaches, including interprofessional consultation, improve outcomes for co-morbid conditions and reduce costs among this very high cost population." This policy change, in combination with 2023 changes to Interprofessional Telephone/Internet/Electronic Health Record Consultation Current Procedural Terminology (CPT) code descriptors allow mental health providers to bill for consultation services shown to be highly effective in diagnosing and treating mental health conditions.

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

This economic impact analysis is sufficient given that this revision is intended only to reduce member cost-sharing for a subset of commonly utilized mental health services. The cost of the substantive changes are minimal or a net positive to Vermonters.

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:

   GUIDELINES FOR DISTINGUISHING BETWEEN PRIMARY AND SPECIALTY MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

2. ADOPTING AGENCY:

   Department of Financial Regulation

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 IMPACTS 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 proposed revisions to this Rule are not expected to have any environmental impact. Therefore, this analysis is sufficent.

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:

   GUIDELINES FOR DISTINGUISHING BETWEEN PRIMARY AND SPECIALTY MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

2. ADOPTING AGENCY:

   Department of Financial Regulation

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:

   Before starting the rulemaking process, the Department made great efforts to solicit input from stakeholders in the mental health community. These efforts included drafting a flyer for stakeholders to ask for input and provide a sense of the Department's timeline for revising the Rule. Representatives of the Department also attended the Department of Mental Health 2023 Annual Conference to discuss the rule and possible revisions to be adopted in 2024.

   The Rule will be posted on the Department's website. The Department will reach out to stakeholders, including the Vermont Psychological Association, Vermont Psychiatric Association, Vermont Department of Health Division of Substance Use Programs, and Vermont Department of Mental Health to alert them to this Rule. Additionally, the Department will ensure that all materials pertinent to this Rule will be available

online and in paper form in the event that interested individuals do not have internet access.

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

   Department of Financial Regulation, Department of Mental Health, Department of Vermont Health Access, Department of Health Division of Substance Use Programs, Office of the Health Care Advocate; Blue Cross Blue Shield of Vermont, MVP Health Care, CIGNA, University of Vermont Health Network, Bi-State Primary Care, Federally Qualified Health Centers, Rural Health Centers, Vermont Psychiatric Association, the Vermont Psychological Association, designated Mental Health Agencies, practicing licensed mental health counselors, licensed clinical social workers, and licensed master's level psychologists.

Scientific Information Statement

THIS FORM IS ONLY REQUIRED IF THE RULE RELIES ON SCIENTIFIC INFORMATION FOR ITS VALIDITY.

PLEASE REMOVE THIS FORM PRIOR TO DELIVERY IF IT DOES NOT APPLY TO THIS RULE FILING:

Instructions:

In completing the Scientific Information Statement, an agency shall provide a summary of the scientific information including reference to any scientific studies upon which the proposed rule is based, for the purpose of validity.

---

1. TITLE OF RULE FILING:

   GUIDELINES FOR DISTINGUISHING BETWEEN PRIMARY AND SPECIALTY MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

2. ADOPTING AGENCY:

   Department of Financial Regulation

3. BRIEF EXPLANATION OF SCIENTIFIC INFORMATION:

   The proposed rule is based on recommendations and input from Public Consulting Group (PCG). In support of its recommendations, PCG cited guidance from the American Psychiatric Association concerning payment for intraprofessional telephone/internet/electronic health record consultations and studies conducted by the Agency for Healthcare Research and Quality (a division of the U.S. Department of Health and Human Services) concerning peer recovery support services payment models.

4. CITATION OF SOURCE DOCUMENTATION OF SCIENTIFIC INFORMATION:

   American Psychiatric Association, Payment for Non-Face-to-Face Services: A Guide to the Psychiatric Consultant (2021), https://www.psychiatry.org/getmedia/c50b024d-14b6-4278-ae9c-bc6b45714837/APA-Billing-Guide-Interprofessional-Health-Record-Consultations-Codes.pdf

U.S. Department of Health and Human Services, Agency for Healthcare Research and Quality, Topic Brief: Peer Recovery Support Services Payment Models for Substance Abuse (June 11, 2021), https://effectivehealthcare.ahrq.gov/sites/default/files/nt_docs/prss-adults-topic-brief.pdf

5. INSTRUCTIONS ON HOW TO OBTAIN COPIES OF THE SOURCE DOCUMENTS OF THE SCIENTIFIC INFORMATION FROM THE AGENCY OR OTHER PUBLISHING ENTITY:

   The cited material is available online. Publicly accessible links to the material are included in the above citations. Paper copies will be made available by the Department upon request.

STATE OF VERMONT
DEPARTMENT OF FINANCIAL REGULATION

Rule I-2013-01 (Revised)

GUIDELINES FOR DISTINGUISHING BETWEEN PRIMARY AND SPECIALTY MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

Table of Contents

Section 1. Purpose.

Under Vermont Law, a health plan shall apply member co-pays to mental health services and to medical services consistently in its health insurance policies/certificates. The member co-pay applicable to mental health and substance abuse services designated as "primary" when rendered by a mental health care provider shall be no greater than the member co-pay applicable to medical services rendered by a primary care provider. The member co-pay for "specialty" mental health and substance abuse services shall be no greater than the member co-pay applicable to specialty medical services and shall apply only to those mental health and substance abuse services not deemed "primary." The purpose of this regulation is to prescribe guidelines for distinguishing between "primary" and "specialty" mental health and substance abuse services.

Section 2. Authority.

This rule is adopted under the authority vested in the Commissioner of Financial Regulation ("Commissioner"), including but not limited to 8 V.S.A. § 15, 3 V.S.A. chapter 25, and Act 171 of 2012, Section 11e, which states: "No later than October 1, 2013, the commissioner of financial regulation shall adopt rules pursuant to 3 V.S.A.

chapter 25 establishing the guidelines for distinguishing between primary and specialty mental health services developed pursuant to Section 11c of this act, taking into account any recommendations received from the committees of jurisdiction."

Section 3. Legislative Mandate.

"A health insurance plan shall provide coverage for the treatment of a mental health condition and shall not establish any rate, term, or condition that places a greater burden on an insured for access to treatment for a mental health condition[1] than for access to treatment for other health conditions, including no greater co-payment for primary mental health care or services than the co-payment applicable to care or services provided by a primary care provider under an insured's policy and no greater co-payment for specialty mental health care or services than the co-payment applicable to care or services provided by a specialist provider under an insured's policy[.]" 8 V.S.A. § 4089b(c)(1) (effective January 1, 2014).

Under Act 171 of 2012, Section 11c, the Department of Financial Regulation ("Department"), in collaboration with a group of stakeholders, first compiled a list of mental health and substance abuse services, identified by procedure codes, and recommended to the Commissioner that these services be deemed "primary" mental health and substance abuse services for purposes of implementing 8 V.S.A. § 4089b(c)(1) on January 1, 2014. In the fall of 2023, the Department, in collaboration with stakeholders, reviewed the list of procedure codes and proposed additional procedure codes to be included. The list of mental health and substance abuse services with associated procedure codes compiled by the stakeholder group, together with updates, shall be published on the Department's website and are included as Appendix A and Appendix B of this rule (the "Primary Care Mental Health and Substance Abuse Procedure Codes").

Section 4. Mental Health and Substance Abuse Services Deemed to Be "Primary" and Therefore Subject to a Co-Pay No Greater Than the Co-Pay Applicable to Medical Services Offered by Primary Care Providers.

The list of services and related procedure codes (CPT/HCPCS) in Appendix A and B of this rule shall be deemed "primary" mental health and substance abuse services. The common elements underlying the selection of these "primary" mental health and substance abuse services include: (1) the most common or routine mental health and substance abuse services; (2) outpatient/office mental health and substance abuse services only; and (3) services provided to all persons regardless of age or gender.

On and after October 1, 2013 with respect to the procedure codes in Appendix A and on and after January 1, 2026 with respect to the additional procedure codes in Appendix B, each health insurance plan shall establish, maintain, administer, and update as required, a

[1] The definition of "mental health condition" includes conditions or disorders involving alcohol or substance abuse. 8 V.S.A. § 4089b.

list of mental health and substance abuse services consistent with those identified in "Primary Care Mental Health and Substance Abuse Procedure Codes" that shall be "primary" when rendered by a mental health care provider and for which the member co-pay shall be no greater than the co-pay applicable to medical services rendered by a primary care provider.

Section 5. Review of Services Deemed "Primary" Mental Health and Substance Abuse Services.

The Department in consultation with the Department of Mental Health shall convene a stakeholder group every five years, or earlier if requested by a stakeholder, to determine any appropriate changes to the services and related codes in "Primary Care Mental Health and Substance Abuse Procedure Codes." Any addition or deletion of services shall require amendment of this rule. The stakeholder group may be of similar composition to the group originally engaged in the compilation of "Primary Care Mental Health and Substance Abuse Procedure Codes."

This original group was comprised of stakeholders, providers, and staff within state agencies, including: the Department of Vermont Health Access, the University of Vermont/Fletcher Allen Health Care (now the University of Vermont Health Network), the Vermont Council of Developmental & Mental Health Agencies, the Vermont Department of Mental Health, the Vermont Division of Alcohol & Substance Abuse Programs (now the Vermont Department of Health, Division of Substance Use Programs), the Vermont Psychiatric Association, the Vermont Psychological Association, designated Mental Health Agencies, practicing licensed mental health counselors, licensed clinical social workers, and licensed master's level psychologists.

The stakeholder group shall be convened by June 1 of the review year and shall provide a recommendation to the Commissioner of the Department by August 31 of the review year. If the stakeholder group recommends changes to "Primary Care Mental Health and Substance Abuse Procedure Codes," the Commissioner may approve the changes. The "Primary Care Mental Health and Substance Abuse Procedure Codes" will be revised with any changes approved by the Commissioner to take effect the subsequent plan year.

Section 6. Severability.

If any provision of this 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 not be affected thereby.

Section 7. Effective Date.

This revision shall take effect on adoption, and shall apply to all health insurance plans issued, offered, or renewed on or after January 1, 2026.

APPENDIX A:
2013 Primary Care Mental Health & Substance Abuse Procedure Codes

Initial Psychiatric Evaluation

90791, Psychiatric diagnostic evaluation (no medical services);

90792, Psychiatric diagnostic evaluation with medical services (E/M new patient codes may be used in lieu of 90792)

Interactive psychiatric diagnostic evaluation: 90791 or 90792, with +90785 (interactive complexity add-on code)

Outpatient Psychotherapy

(Time is face-to-face with patient and/or family)

90832, Psychotherapy, 30 minutes

With medical evaluation and management services: appropriate outpatient E/M code (not selected on the basis of time), and +90833, 30-minute psychotherapy add-on-code

90834, Psychotherapy 45 minutes

With medical evaluation and management services: appropriate outpatient E/M code (not selected on the basis of time), and +90836, 45-minute psychotherapy add on-code

90837, Psychotherapy, 60 minutes

With medical evaluation and management services: appropriate outpatient E/M code (not selected on the basis of time), and +90838, 60-minute psychotherapy add-on-code

Outpatient Interactive Psychotherapy

(Time is with patient and/or family)

90832, Psychotherapy, 30 minutes and +90785, interactive complexity add-on-code

With medical evaluation and management services: appropriate outpatient E/M code (not selected on the basis of time), and +90833, 30-minute psychotherapy add-on-code, and +90785, interactive complexity add-on-code

90834, Psychotherapy, 45 minutes and +90785, interactive complexity add-on-code

With medical evaluation and management services: appropriate outpatient E/M code (not selected on the basis of time), and +90836, 45-minute psychotherapy add-on-code, and +90785, interactive complexity add-on-code

90837, psychotherapy, 60 minutes and +90785, interactive complexity add-on-code

With medical evaluation and management services; appropriate outpatient E/M code (not selected on the basis of time), and +90838, 60-minute psychotherapy add-on-code, and +90785, interactive complexity add-on-code

Other Psychotherapy

90846, Family psychotherapy (without the patient present)

90847, Family psychotherapy (conjoint psychotherapy) (with patient present)

90853, Group psychotherapy (for other than multiple-family group), +90875, interactive complexity add-on

Interactive group psychotherapy use 90853 (for other than multiple-family group), +90875, interactive complexity

Other Psychiatric Services or Procedures

Pharmacologic management, including prescription, use, and review of medication with no more than minimal medical psychotherapy; use appropriate E/M code (Psychologists will use +90863)

HCPCS Codes for Substance Abuse Treatment

H0001, Alcohol and/or drug assessment

H0004, Behavioral health counseling and therapy, per 15 minutes

H0005, Alcohol and/or drug services; group counseling by a clinician

H0006, Alcohol and/or drug services; case management

H0015, Alcohol and/or drug services; intensive outpatient (treatment program that operates at least 3 hours/day and at least 3 days/week and is based on an individualized treatment plan), including assessment, counseling; crisis intervention, and activity therapies or education

H0020, Alcohol and/or drug services; methadone administration and/or service (provision of the drug by a licensed program)

APPENDIX B:
2024 Primary Care Mental Health & Substance Abuse Procedure Codes

Interprofessional Telephone/Internet/Electronic Health Record Consultation (Non Face to Face)

99446, Consulting physician or other qualified healthcare professional performs a 5–10-minute consult via telephone internet or electronic record and provides a verbal and written report to the requesting physician/qualified healthcare professional.

99447, Consulting physician or other qualified healthcare professional performs a 11–20-minute consult via telephone internet or electronic record and provides a verbal and written report to the requesting physician/qualified healthcare professional.

99448, Consulting physician or other qualified healthcare professional performs a 21–30-minute consult via telephone internet or electronic record and provides a verbal and written report to the requesting physician/qualified healthcare professional.

99449, Consulting physician or other qualified healthcare professional performs a > 31-minute consult via telephone internet or electronic record and provides a verbal and written report to the requesting physician/qualified healthcare professional.

99451, Consult without discussion usually involves electronic health record assessment and management service provided by a consultative physician, including a written report to the patient's treatment/requesting physician or other qualified health care professional 5 minutes or more of medical consultative time.

99452, Interprofessional telephone/internet/electronic health record referral service provided by a treating/requesting physician or other qualified health care professional, 30 minutes.

Peer Support Services

H0038, Self-help/peer services, per 15 minutes.