

Administrative Procedures – Proposed 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 proposed filing will be considered complete upon the submission and acceptance of the following components:

- Proposed Rule Coversheet
- Adopting Page
- Economic Impact Statement
- Public Input Statement
- 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)

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 the proposed coversheet form will be used to generate a notice of rulemaking in the newspapers of record. Publication of notices will be charged back to the promulgating agency based on the word count of the notices.

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:

Rule Title: Vermont Workers' Compensation and Occupational Disease
Rules 1-27

Lindsay H. Kurrle, on 5/23/18
(signature) (date)

Printed Name and Title:
Lindsay H. Kurrle, Commissioner, Vermont Department of Labor

RECEIVED BY: _____

- Proposed Rule Coversheet
- Adopting Page
- Economic Impact Statement
- Public Input Statement
- 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 Approval received by E-mail.

1. TITLE OF RULE FILING:

Vermont Workers' Compensation and Occupational Disease Rules 1-27.

2. ADOPTING AGENCY:

Vermont Department of Labor

3. PRIMARY CONTACT PERSON:

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

Name: J. Stephen Monahan, Esq.

Agency: Vermont Department of Labor

Mailing Address: P.O. Box 488, 5 Green Mountain Drive,
Montpelier, VT 05601-0488

Telephone: 802 828 - 2138 Fax: 802 828 - 2195

E-Mail: stephen.monahan@vermont.gov

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

<http://labor.vermont.gov/legal-information/proposed-rules/>

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: Beth A. DeBernardi, Esq.

Agency: Vermont Department of Labor

Mailing Address: P.O. Box 488, 5 Green Mountain Drive,
Montpelier, VT 05601-0488

Telephone: 802 828 - 2996 Fax: 802 828 - 2195

E-Mail: beth.a.debernardi@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:

N/A

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

N/A

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).

21 V.S.A. §602 (a).

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

The proposed rules amend various definitions to conform with proposed changes to the Workers' Compensation Vocational Rehabilitation Rules.

Proposed Rule 3.1300 clarifies that the timeframe for reporting a "first aid only" claim is five business days.

Proposed Rule 7.1800 clarifies that an approved medical treatment preauthorization request expires if not acted upon within six months.

Proposed Rule 8.1200 changes the average weekly wage calculation to include (rather than exclude) paid leave time during the 26 weeks prior to the injury.

Proposed Rules 11.1400 and 12.1730 update the reference to the Vermont Department of Health's Rule Governing the Prescribing of Opioids for Pain.

Proposed Rule 20.1340 clarifies the manner in which attorney fee rates are increased as the Consumer Price Index increases.

8. **EXPLANATION OF WHY THE RULE IS NECESSARY:**

The proposed amendments to various definitions are to eliminate inconsistencies between the Workers' Compensation Rules and the Vocational Rehabilitation Rules.

Proposed Rule 7.1800 is necessary to clarify that an approved medical treatment preauthorization request does not remain valid indefinitely, and will expire if not acted upon within six months, or sooner if the

injured worker's medical condition changes in the interim.

Proposed Rule 8.1200 is necessary to more accurately reflect an injured worker's pre-injury average weekly wages, by including weeks in which he or she received paid (as opposed to unpaid) sick, vacation and/or holiday leave.

The proposed amendments to Rules 11.1400 and 12.1730 are necessary to reflect the Department of Health's most recent Rule Governing the Prescribing of Opioids for Pain.

The proposed amendment to Rule 20.1340 is necessary to allow for reasonable increases in the attorney fee reimbursement rate without requiring de minimus adjustments.

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

Injured workers, employers, workers' compensation insurance carriers and adjusters, attorneys, vocational rehabilitation counselors and health care providers (including independent medical examiners). Other affected groups may include the Vermont Association for Justice, Lake Champlain Chamber of Commerce, AFL-CIO, Vermont State Employees Association, Vermont Chamber of Commerce, Vermont-National Education Association, State of Vermont Risk Management Division, American Insurance Association, Associated Industries of Vermont, Associated General Contractors of Vermont and Vermont League of Cities and Towns, as well as the attorneys, insurance adjusters, medical providers and vocational rehabilitation counselors on the Department's workers' compensation list serve and other workers' compensation insurance and health care provider interest groups.

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

The proposed changes to Rules 3.1300, 7.1800, 11.1400, 12.1730 and 20.1340 are not expected to have any measurable economic impact on injured workers, employers, insurance carriers, attorneys or other individuals or entities involved in the workers' compensation process.

For most injured workers, the proposed change to Rule 8.1210 likely will not impact their average weekly wage and compensation rate calculation to any measurable extent. Injured workers who regularly work overtime hours may realize a slight decrease in their average weekly wage and compensation rate if paid sick, vacation and holiday hours are included in the calculation.

The National Council on Compensation Insurance (NCCI) anticipates that the proposed change to Rule 8.1210 will have only a negligible impact on indemnity benefit costs in Vermont.

11. A HEARING IS SCHEDULED .

12. 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: 8/21/2018

Time: 10:00 AM

Street Address: Vermont Dept. of Labor, 5 Green Mountain Drive, Montpelier, VT

Zip Code: 05601

Date: 8/23/2018

Time: 10:00 AM

Street Address: Vermont Dept. of Labor, 200 Asa Bloomer Building, Rutland, VT

Zip Code: 05701

Date: 8/24/2018

Time: 10:00 AM

Street Address: Vermont Dept. of Labor, 63 Pearl St.,
Burlington, VT

Zip Code: 05401

Date:

Time: AM

Street Address:

Zip Code:

13. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):
8/31/2018
14. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).
Worker's Compensation
Workers' Compensation proposed rules
Vermont Department of Labor proposed rules
First aid claims, Average weekly wage, Medical treatment
pre-authorization, Opioids, Attorney fees

Run Spell Check

Administrative Procedures – Adopting Page

Instructions:

This form must be completed for each filing made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

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:

Vermont Workers' Compensation and Occupational Disease Rules
1-27.

2. ADOPTING AGENCY:

Vermont Department of Labor

3. AGENCY REFERENCE NUMBER, IF ANY:

N/A

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 LAST DATE OF ADOPTION FOR THE EXISTING RULE*):

Adopted Rules #16-040 and #16-042, Vermont Workers' Compensation and Occupational Disease Rules 1-27, adopted 11/1/2016.

Run Spell Check

Administrative Procedures – Economic Impact Statement

Instructions:

In completing the economic impact statement, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

Rules affecting or regulating public education and public schools must include cost implications to local school districts and taxpayers in the impact statement (see 3 V.S.A. § 832b for details).

The economic impact statement also contains a section relating to the impact of the rule on greenhouse gases. Agencies are required to explain how the rule has been crafted to reduce the extent to which greenhouse gases are emitted (see 3 V.S.A. § 838(c)(4) for details).

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I conclude that this rule is the most appropriate method of achieving the regulatory purpose. In support of this conclusion I have attached all findings required by 3 V.S.A. §§ 832a, 832b, and 838(c) for the filing of the rule entitled:

Rule Title: Vermont Workers' Compensation and Occupational Disease Rules 1-27.

 _____, on 5/23/18 _____.
(signature) (date)

Printed Name and Title:
Lindsay H. Kurrle, Commissioner, Vermont Department of Labor

BE AS SPECIFIC AS POSSIBLE IN THE COMPLETION OF THIS FORM, GIVING FULL INFORMATION ON YOUR ASSUMPTIONS, DATABASES, AND ATTEMPTS TO GATHER OTHER INFORMATION ON THE NATURE OF THE COSTS AND BENEFITS INVOLVED. COSTS AND BENEFITS CAN INCLUDE ANY TANGIBLE OR INTANGIBLE ENTITIES OR FORCES WHICH WILL MAKE AN IMPACT ON LIFE WITHOUT THIS RULE.

1. TITLE OF RULE FILING:

Vermont Workers' Compensation and Occupational Disease Rules 1-27.

2. ADOPTING AGENCY:

Vermont Department of Labor

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:

Injured workers, employers, workers' compensation insurance carriers and adjusters, attorneys, vocational rehabilitation counselors and health care providers (including independent medical examiners). Other affected groups may include the Vermont Association for Justice, Lake Champlain Chamber of Commerce, AFL-CIO, Vermont State Employees Association, Vermont Chamber of Commerce, Vermont-National Education Association, State of Vermont Risk Management Division, American Insurance Association, Associated Industries of Vermont, Associated General Contractors of Vermont and Vermont League of Cities and Towns, as well as the attorneys, insurance adjusters and agents, medical providers and vocational rehabilitation counselors on the Department's workers' compensation list serve and other workers' compensation insurance and health care provider interest groups.

By providing increased clarity and consistency, the proposed amendments will benefit injured workers, employers, insurance carriers and adjusters, attorneys and other individuals and entities who engage in the workers' compensation process.

The proposed changes to Rules 3.1300, 7.1800, 11.1400, 12.1730 and 20.1340 are not expected to have any measurable economic impact on injured workers, employers, insurance carriers, attorneys or other individuals or entities who engage in the workers' compensation process.

For most injured workers, the proposed change to Rule 8.1210 likely will not impact their average weekly wage and compensation rate calculation to any significant extent. Injured workers who regularly work overtime hours may realize a slight decrease in their average weekly wage and compensation rate if paid sick, vacation and holiday hours are included in the calculation.

The National Council on Compensation Insurance (NCCI) anticipates that the proposed change to Rule 8.1210 will have only a negligible impact on indemnity benefit costs in Vermont.

4. IMPACT ON SCHOOLS:

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

None anticipated.

5. COMPARISON:

COMPARE THE ECONOMIC 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:

The rules are required by statute, 21 V.S.A. §§601-711. The workers' compensation statute applies equally to all employers in Vermont, and thus does not permit separate requirements for small business.

6. FLEXIBILITY STATEMENT:

COMPARE THE BURDEN IMPOSED ON SMALL BUSINESS BY COMPLIANCE WITH THE RULE TO THE BURDEN WHICH WOULD BE IMPOSED BY ALTERNATIVES CONSIDERED IN 3 V.S.A. § 832a:

The rules are required by statute, 21 V.S.A. §§601-711. Given that virtually 100 percent of small businesses are required by statute to purchase workers' compensation insurance from insurance carriers, none of the alternatives considered in 3 V.S.A. §832a could be applied here.

7. GREENHOUSE GAS IMPACT: *EXPLAIN HOW THE RULE WAS CRAFTED TO REDUCE THE EXTENT TO WHICH GREENHOUSE GASES ARE EMITTED, EITHER DIRECTLY OR INDIRECTLY, FROM THE FOLLOWING SECTORS OF ACTIVITIES:*

A. TRANSPORTATION —

IMPACTS BASED ON THE TRANSPORTATION OF PEOPLE OR PRODUCTS (e.g.,

"THE RULE HAS PROVISIONS FOR CONFERENCE CALLS INSTEAD OF TRAVEL TO MEETINGS" OR "LOCAL PRODUCTS ARE PREFERENTIALLY PURCHASED TO REDUCE SHIPPING DISTANCE."):

No impact anticipated.

B. LAND USE AND DEVELOPMENT —

IMPACTS BASED ON LAND USE AND DEVELOPMENT, FORESTRY, AGRICULTURE ETC. (e.g., "THE RULE WILL RESULT IN ENHANCED, HIGHER DENSITY DOWNTOWN DEVELOPMENT." OR "THE RULE MAINTAINS OPEN SPACE, FORESTED LAND AND/OR AGRICULTURAL LAND."):

No impact anticipated.

C. BUILDING INFRASTRUCTURE —

IMPACTS BASED ON THE HEATING, COOLING AND ELECTRICITY CONSUMPTION NEEDS (e.g., "THE RULE PROMOTES WEATHERIZATION TO REDUCE BUILDING HEATING AND COOLING DEMANDS." OR "THE PURCHASE AND USE OF EFFICIENT ENERGY STAR APPLIANCES IS REQUIRED TO REDUCE ELECTRICITY CONSUMPTION."):

No impact anticipated.

D. WASTE GENERATION / REDUCTION —

IMPACTS BASED ON THE GENERATION OF WASTE OR THE REDUCTION, REUSE, AND RECYCLING OPPORTUNITIES AVAILABLE (e.g., "THE RULE WILL RESULT IN REUSE OF PACKING MATERIALS." OR "AS A RESULT OF THE RULE, FOOD AND OTHER ORGANIC WASTE WILL BE COMPOSTED OR DIVERTED TO A 'METHANE TO ENERGY PROJECT'.):

No impact anticipated.

E. OTHER —

IMPACTS BASED ON OTHER CRITERIA NOT PREVIOUSLY LISTED:

No other economic impacts anticipated.

Run Spell Check

Administrative Procedures – Public Input Statement

Instructions:

In completing the public input statement, an agency describes what it did do, or will do to maximize the involvement of the public in the development of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

1. TITLE OF RULE FILING:

Vermont Workers' Compensation and Occupational Disease Rules 1-27.

2. ADOPTING AGENCY:

Vermont Department of Labor

3. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

Following ICAR approval, the Department will post the proposed rules on its website. It also will send an email notification to solicit input from various interest groups whose members are likely to be affected. These include the Vermont Association for Justice, Lake Champlain Chamber of Commerce, AFL-CIO, Vermont State Employees Association, Vermont Chamber of Commerce, Vermont-National Education Association, State of Vermont Risk Management Division, American Insurance Association, Associated Industries of Vermont, Associated General Contractors of Vermont and Vermont League of Cities and Towns, as well as the attorneys, insurance adjusters, medical providers and vocational rehabilitation counselors on the Department's workers' compensation list serve and other workers' compensation insurance and health care provider interest groups.

Also following ICAR approval, the Department will schedule and convene public hearings in Burlington, Montpelier and Rutland, Vermont.

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

Vermont Association for Justice, Lake Champlain Chamber of Commerce, AFL-CIO, Vermont State Employees Association, Vermont Chamber of Commerce, Vermont-National Education Association, State of Vermont Risk Management Division, American Insurance Association, Associated Industries of Vermont, Associated General Contractors of Vermont, Vermont League of Cities and Towns, and members of the Unified Pain Management System Advisory Council, as well as the attorneys, insurance adjusters, medical providers and vocational rehabilitation counselors on the Department's workers' compensation list serve and other workers' compensation insurance and health care provider interest groups.

Run Spell Check

Administrative Procedures – Incorporation by Reference Statement

Instructions:

In completing the incorporation by reference statement, an agency describes any materials that are incorporated into the rule by reference and why the full text was not reproduced within the rule.

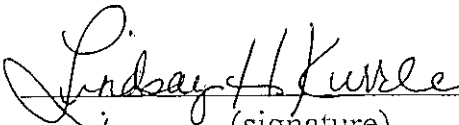
This form is only required when a rule incorporates materials by referencing another source without reproducing the text within the rule itself (e.g. federal or national standards, or regulations).

Copies of incorporated materials will be held by the Office of the Secretary of State until adoption or formal withdrawal of the rule is complete. Materials will be returned to the agency upon completion of the rule.

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I certify that the text of the matter incorporated has been reviewed by an official of the agency. I further certify that the agency has the capacity and intent to enforce the rule entitled:

Rule Title: Vermont Workers' Compensation and Occupational Disease Rules 1-27.

 _____, on 5/23/18
(signature) (date)

Printed Name and Title:

Lindsay H. Kurrle, Commissioner, Vermont Department of Labor

1. TITLE OF RULE FILING:

Vermont Workers' Compensation and Occupational Disease Rules 1-27.

2. ADOPTING AGENCY:

Vermont Department of Labor

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

Vermont Department of Health Rule Governing the Prescribing of Opioids for Pain, sections 1.0-4.0 and 6.0-8.0, posted on the Vermont Department of Health website at

http://www.healthvermont.gov/sites/default/files/documents/pdf/REG_opioids-prescribing-for-pain.pdf.

4. OBTAINING COPIES: (*EXPLAIN HOW THE MATERIAL(S) CAN BE OBTAINED BY THE PUBLIC, AND AT WHAT COST*):

The incorporated materials are posted on the Vermont Department of Health website at

http://www.healthvermont.gov/sites/default/files/documents/pdf/REG_opioids-prescribing-for-pain.pdf, and can be downloaded free of charge.

5. 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*):

The incorporated materials include those portions of the Vermont Department of Health rule concerning the prescribing of opioids for chronic pain. Section 5.0, which concerns the prescribing of opioids for acute pain, is not incorporated.

6. REASONS FOR INCORPORATION BY REFERENCE (*EXPLAIN WHY THE AGENCY DECIDED TO INCORPORATE THE MATERIALS RATHER THAN REPRODUCE THE MATERIAL IN FULL WITHIN THE TEXT OF THE RULE*):

The incorporated materials are several pages long, and can be easily accessed via the Vermont Department of Health website. As most workers' compensation claims do not involve the use of opioid medications to treat chronic pain, including the incorporated materials in the body of the proposed rules themselves would be unnecessarily confusing.

7. THE INCORPORATED MATERIALS HAVE BEEN REVIEWED BY THE FOLLOWING OFFICIAL OF THE AGENCY:

Beth A. DeBernardi, Esq., Workers' Compensation
Administrative Law Judge

J. Stephen Monahan, Director, Workers' Compensation
and Safety Division, Vermont Dept. of Labor

8. THE ADOPTING AGENCY REQUESTS THAT ALL COPIES OF
INCORPORATED MATERIALS
BE KEPT WITH THE RULE FILING

Run Spell Check