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Healthy Vermonters

5700 Healthy Vermonters (01/01/2006, 05-24)

The legislature authorized the creation of the Healthy Vermonters program with the passage of Act 127 (2002). This program provides a pharmacy discount to eligible Vermonters, helping beneficiaries purchase prescription medicines necessary to maintain their health and prevent unnecessary health problems. The rules that follow describe this pharmacy program.

Beneficiary Fraud

5701 Beneficiary Fraud (07/01/2007, 06-05)

A person who knowingly gives false or misleading information or holds back needed information in order to obtain Healthy Vermonters benefits may be prosecuted for fraud under Vermont law or federal law or both. If convicted, the individual may be fined or imprisoned or both.

When the ESD learns that fraud may have been committed, it will investigate the case with respect for confidentiality and the legal rights of the beneficiary. If appropriate, the case will be referred to the State's Attorney or Attorney General for a decision on whether or not to prosecute.

Eligibility

5710 Eligibility (05/01/2010, 10-02)

Individuals are eligible for Healthy Vermonters if they have household income no greater than 300 percent of the federal poverty level (FPL), as calculated under the rules for the VHAP program.

Individuals are also eligible for Healthy Vermonters if they have household income no greater than 400 percent of the FPL, as calculated under the rules for the VHAP program (5300), and meet the categorical eligibility requirements.

The following table presents the eligibility requirements.

Eligibility Requirements for Healthy Vermonters

Income Maximum	**Categorical Eligibility Requirement**
350 percent of the FPL	none
400 percent of the FPL	age 65 or older
	or disabled
	or disabled and eligible for social security disability benefits

Individuals remain eligible as long as they meet all program requirements.

Insurance Coverage

5711 Insurance Coverage (01/01/2007, 06-48)

Individuals must be without adequate coverage for prescription drugs to be eligible. Individuals are considered without adequate coverage if they have no insurance policy or program benefit that includes any prescription drug coverage; however, beneficiaries on Part D in an MA-PD or PDP plan will be considered uninsured as to excluded Part D drug classes, except to the extent that such drugs are covered by the MA-PD or PDP plans. They are also considered without adequate coverage if no prescription drugs are covered under their policy because they have reached the annual maximum coverage limit.

The department considers individuals covered by VHAP-Pharmacy insured because that program has prescription drug coverage and no annual maximum. Beneficiaries who are eligible for Part D must be enrolled in a Part D prescription drug plan or a Medicare Advantage-Prescription Drug benefit plan to be eligible for Healthy Vermonters. The department considers individuals covered by VScript, including VScript expanded, to be uninsured for drugs that are excluded from VScript coverage (rule 5640) and for drug classes that are excluded under Part D coverage (rule 5743) for Medicare beneficiaries, and automatically extends coverage for these drugs under the Healthy Vermonters program.

Citizenship and Identity

5712 Citizenship and Identity (01/01/2007, 06-48)

The rules for citizenship and identity are in rule 4170.

Residence

5713 Residence (01/01/2007, 06-48)

An individual must be a state resident to be eligible. Individuals are considered state residents if they are living in Vermont at the time of submitting the application for the Healthy Vermonters Program:

A. with intent to remain permanently or for an indefinite period of time or

B. while incapable of stating intent.

Temporary absences from Vermont for any of the following purposes do not interrupt or end Vermont residence: visiting, obtaining necessary medical care, or obtaining education or training under a program of vocational rehabilitation or higher education.

An individual must remain in contact with the department by providing an up-to-date address.

Living Arrangement

5714 Living Arrangement (07/01/2002, 02-18)

An individual must be living outside a correctional facility, including a juvenile facility, to be eligible. Psychiatric and drug or alcohol treatment facilities are not considered correctional facilities.

Financial Need

5720 Financial Need (07/01/2002, 02-18)

An individual must be a member of a Healthy Vermonters group with countable income under the applicable income test to meet this requirement.

A Healthy Vermonters group includes all of the following individuals, if living in the same home:

A. the Healthy Vermonters applicant and the applicants spouse;

B. children under age 21 of the applicant or spouse;

C. siblings under age 21, including half siblings and stepsiblings, of B.;

D. parents, including a stepparent and adoptive parents of C.; and

E. children of any children in B. and C.; and

F. unborn children of any of the above.

The Healthy Vermonters group shall not include any individual receiving Reach Up or SSI/AABD benefits, and the income of these individuals living in the household shall not be considered in determining eligibility.

5721 Income (07/01/2002, 02-18)

Countable income is all earned and unearned income, as defined in this section, less all allowed deductions. Income in the month of application (or review) and future months is estimated based on income in the calendar month prior to the month of application (or review) unless this income does not accurately reflect ongoing income. If changes are expected to occur, an estimate of income based on current information should be used.

To determine countable monthly income, average weekly income is multiplied by 4.3 and average bi-weekly income is multiplied by 2.15.

A. Lump Sum Receipts

Lump sum benefits that would have been counted as income if received on time, such as social security benefits and unemployment compensation, shall be added to all other countable income of an applicant for or beneficiary of Healthy Vermonters and counted only in the month of receipt.

Windfall lump sums such as insurance payments and money received from the sale of a resource, including the sale of an excluded resource, are not counted.

An insurance payment or similar third party payment received and used for a specific purpose, such as the payment of medical bills or funeral costs, is excluded. Payments not used for the stated purpose are counted as income in the month received.

B. Unearned Income

Unearned income includes, but is not limited to, the following:

- Income from pension and benefit programs, such as social security, railroad retirement, veteran's pension or compensation, unemployment compensation, and employer or individual private pension plans or annuities.
- Interest and dividends.
- Child support payments (see rule 5722 V for the exclusion of the first $50) and alimony payments.
- Income from capital investments in which the individual is not actively engaged in managerial effort.
- Time payments on mortgages or notes resulting from a casual sale (i.e., a sale not related to self-employment) of real or personal property.
- Voluntary contributions from others.

Unearned income does not include the following:

- Infrequent or irregular voluntary cash contributions or gifts, such as Christmas, birthday, or graduation presents, received from friends or relatives.
- In-kind income.
- Five percent of a VA monthly award retained by a guardian.

C. Earned Income

Earned income includes all wages, salary, commissions, or profit from activities in which the individual is engaged as an employee or a self-employed person, including, but not limited to, active management of capital investments (e.g., rental property).

Earned income is defined as income before any deductions for income taxes, FICA, insurance or any other deductions voluntary or involuntary except that, in determining earned income for self-employed individuals, business expenses are deducted first.

Earnings over a period of time, for which settlement is made at one given time, are also included (e.g., sale of farm crops, livestock, poultry). Monthly income is determined by dividing the settlement by the number of months in which it was earned.

Earned income does not include in-kind income.

The following items are deducted from gross earned income in the sequence listed:

1. Business expenses (self-employment only)
2. Standard employment expense deduction
3. Dependent care expenses

D. Business Expenses

Business expenses, which are deducted from gross receipts to determine adjusted gross earned income, are limited to operating costs necessary to produce cash receipts, such as:

- Office or shop rental; taxes on farm or business property;
- Hired help;
- Interest on business loans; and
- Cost of materials, stock, and inventory, livestock for resale required for the production of this income.

Items such as personal business and entertainment expenses, personal transportation, purchase of capital equipment, depreciation, and payment on the principal of loans for capital assets or durable goods are not allowable business expenses.

Tax returns and business records are considered appropriate sources of accurate figures for farm and business receipts and expenses.

The income of a Healthy Vermonters group owning or operating a commercial boarding house shall be treated as any other business income. A commercial boarding house is defined as an establishment licensed as a commercial enterprise that offers meals and lodging for compensation. In areas without licensing requirements, a commercial boarding house shall be defined as a commercial establishment that offers meals and lodging with the intention of making a profit.

No computation is required for foster homes furnishing boarding care to children in custody of, and placed by, the Family Services Division. Department board rates are established to cover expenses only, with no profit available; therefore, no earned income is considered available from this source.

For a Healthy Vermonters group that is not a commercial boarding house, the business expense of furnishing room and board, alone or as part of custodial care, shall be allowed, provided that the amount shall not exceed the payment the Healthy Vermonters group receives from the roomer or boarder for lodging and meals. (See the Medicaid Procedures Manual at P-2420 D2 for the table of standard business expense deductions for homes providing room or board on a non-commercial basis.)

Income

E. Standard Employment Expense Deduction

The standard employment expense deduction is the first $90.00 earned per month after deduction of business expenses, where applicable.

The standard employment expense deduction is applied separately to the gross countable earned income of each individual in the Healthy Vermonters group who is employed or self-employed.

F. Dependent Care Expenses

Dependent care expenses necessary to enable the individual to retain his or her employment or accept employment will be deducted up to a maximum of $175.00 per month for the care of each member of the Healthy Vermonters group who is an incapacitated adult or a child age two years or older. Up to a maximum of $200 per month may be deducted for the care of each child under two years of age who is a member of the Healthy Vermonters group.

Dependent care expenses for the care of a child are not deducted unless the child requiring care is a member of the Healthy Vermonters group or is not a member of the Healthy Vermonters group solely because the child is an SSI/AABD or an Reach Up recipient and is:

1. under age 13; or

2. at least age 13 but younger than age 21 and physically or mentally incapable of caring for himself or herself, as verified by the written report of a physician or licensed psychologist; or

3. at least age 13 but younger than age 21 and under court supervision.

Dependent care expenses will be allowed as paid up to the maximum. If a recipient's dependent care expenses are below the maximum, transportation to and from the dependent care facility may be deducted as part of the expense up to the maximum for both dependent care and transportation.

Payments for dependent care provided by a member of the same Healthy Vermonters group, by the child's biological or adoptive parent, stepparent, or legal guardian, or by the spouse of an incapacitated adult do not qualify as necessary dependent care expenses under this policy.

The provider of care must be at least 16 years of age. A deduction for dependent care expenses for care of a child can be allowed only when neither parent is available and able to provide the necessary care. A deduction for dependent care expenses for care of an incapacitated adult can only be allowed when the incapacitated adult's spouse, if any, is either unavailable, or available but unable to provide the necessary care due to incapacity. A spouse employed during the time care is required is considered unavailable.

INTERPRETIVE MEMO

[X] Healthy Vermonters Rule Interpretation [ ] Healthy Vermonters Procedure Interpretation

This interpretive memo remains effective statewide until it is specifically supersededed–either by a subsequent interpretive memo or by a contradictory rule with a later date.

Reference 5722 Date of this Memo 01/01/2010 Page 1 of 1
This Memo: [X] is New [ ] Replaces one dated _____

UPDATE:

Wages paid by the Census Bureau for temporary employment are excluded.

INTERPRETIVE MEMO

[X] Healthy Vermonters Rule Interpretation [ ] Healthy Vermonters Procedure Interpretation

This interpretive memo remains effective statewide until it is specifically supersededed–either by a subsequent interpretive memo or by a contradictory rule with a later date.

Reference 5722 Date of this Memo 02/01/2010 Page 1 of 1
This Memo: [X] is New [ ] Replaces one dated _____

UPDATE:

Any income received from a home equity conversion plan is excluded in the month of receipt. If the income is retained after the month of receipt, count it as a resource beginning the month after receipt.

Excluded Income

5722 Excluded Income (07/01/2002, 02-18)

A. Any income received by a beneficiary of SSI/AABD or Reach Up living in the Healthy Vermonters household.

B. All income to an undergraduate student (including parents or children in the Healthy Vermonters group) from student grants, loans, or work study if:

1. such loans or grants are made under a program administered or insured by the U. S. Secretary of Education; or

2. the sponsor of the grant or loan precludes its use for maintenance purposes; or

3. the work study program is administered by a college or university recognized by educational authorities and the undergraduate student is enrolled half time or more than half time, as defined in relation to the definition of full time used by the school.

Examples of excludable income sources are: federal Pell Grants, Vermont Student Assistance Corporation grants or loans, federal Supplemental Educational Opportunity Grants (SEOG), and federal College Work-Study Programs (CWSP).

That portion of any Veterans Administration Educational Assistance Program payment that is for the student and is actually used for tuition, books, fees, child care services or other expenses necessary for enrollment is also excluded.

C. Student financial assistance provided under Title IV of the Higher Education Act or Bureau of Indian Affairs Student Assistance programs.

Examples of programs in Title IV of the Higher Education Act include:

- Federal Pell Grants.
- Federal Supplemental Educational Opportunity Grants (SEOG).
- State Student Incentive Grants (SSIG).
- FederalCollegeWork Study (CWSP).
- Federal Perkins Loans. These are different from loans under the Carl D. Perkins Vocational and Applied Technology Education Act, which are not totally disregarded (see D).
- Educational loans under the federal Family Educational Loan Program or the federal Direct Student Loans Program (Stafford or PLUS loans).

D. Student financial assistance provided under the Carl D. Perkins Vocational and Applied Technology Education Act when the assistance is made available to meet attendance costs. Attendance costs include:

1. tuition and fees normally assessed a student carrying the same academic workload as the applicant/beneficiary, as determined by the institution, including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study as the applicant or beneficiary; and

2. an allowance for books, supplies, transportation, dependent care and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution.

Excluded Income

E. Reimbursements for expenses such as child or dependent care, transportation, meals, and purchase or maintenance of clothing, attributable to participation in unpaid voluntary activities, including the value of meals provided during the course of these activities.

F. Payments made pursuant to a court order for support or alimony, an administrative order for support issued by the Human Services Board, or a contract between the Office of Child Support and noncustodial parent requiring the payment of support. This income exclusion is limited to payments actually made by a member of the Healthy Vermonters group toward the support of a person outside the group. The payment amount is deducted first from the Healthy Vermonters group's countable earned income, with any balance deducted from unearned income.

G. The value of 3SquaresVT benefits under the Food Stamp Act of 1977.

H. The value of foods donated by the U. S. Department of Agriculture (surplus commodities).

I. Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

J. Earned income of a child under the age of 19, if such child is a full-time student or a part-time student who works less than full time. A child is a student if he or she is enrolled in a school, college, university, or a course of vocational or technical training designed as preparation for gainful employment. Such educational institution shall determine whether the student is enrolled full time or part time. Full-time employment is work that involves 100 or more hours per month.

K. Payments for support services or reimbursement for out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions and to persons serving in the Service Corps of Retired Executives and Active Corps of Executives or any other program under Titles II and III pursuant to Section 418 of P. L. 93-133.

L. Payments to individual volunteers under Title I of P. L. 93-133, Section 404(g); University Year For Action payments under P. L. 93-113, and P. L. 96-143; and Section 9 (VISTA) payments; unless determined by the Director of ACTION to be equivalent to or greater than the federal or state minimum wage.

M. The tax-exempt portions of payments made pursuant to P. L. 92-203 (Alaska Native Claims Settlement Act of 1973).

N. Payments distributed per capita to or held in trust for members of any Indian Tribe under P. L. 92-254 or P. L. 93-134, or P. L. 94-540.

O. Payments received for the care of foster children in the custody of, and placed by, the Family Services Division. The rate of payment is established to cover expenses only, with no profit available; therefore, no income is considered available from this source.

P. Experimental Housing Allowance Program payments made under Annual Contributions Contracts entered into before January l, 1975, under the U. S. Housing Act of 1937, as amended.

Q. Reach Up support services, either as reimbursements or advance payments to the individual for child care, transportation, work-related expenses, work-related supportive services, education, or training-related supportive services.

R. Any benefits received under Title VII, Nutrition Program for the Elderly, of the Older American Act of 1965, as amended.

S. The value of supplemental food assistance received under the Child Nutrition Act of 1966, as amended, and the Special Food Service Program for children under the National School Lunch Act, as amended (P. L. 92-433 and P. L. 93-150).

Excluded Income

T. Receipts distributed to members of certain Indian tribes referred to in Section 5 of P. L. 94-114, which became effective October 17, 1975.

U. Any income received from an emergency fuel supplement or energy allowance to assist with the cost of heating.

V. The first $50 in child support payments made by a noncustodial parent on behalf of a Healthy Vermonters group member within each calendar month. When more than one noncustodial parent makes child support payments on behalf of a single Healthy Vermonters group in the same calendar month, the maximum amount of child support to be disregarded in determining the Healthy Vermonters group's eligibility is $50.

W. Payments to persons of Japanese or Aleut ancestry as restitution for injustices suffered during the Second World War.

X. German reparations to concentration camp survivors, slave laborers, partisans, and other victims of the Holocaust. Settlement payments to victims of Nazi persecution or their legal heirs resulting from the confiscation of assets during World War II.

Y. Federal Earned Income Tax Credit (EITC), whether received with each paycheck or as a refund (lump sum).

Z. Payments made from the Agent Orange Settlement Fund or any other fund established because of the Agent Orange product liability litigation.

AA. Payments made pursuant to the Radiation Exposure Compensation Act (P. L. 101-426).

AB. Payments made under Indian Trust Funds Acts (P. L. 97-458 and P. L. 98-64) and initial purchases made with such funds by the original beneficiary of the funds.

AC. Interest held in a trust or in restricted lands pursuant to section 8 of P. L. 93-134 and up to $2,000 annual income received from the lease or other uses of the individually owned trust or restricted lands.

AD. Distributions made under P. L. 100-241, which amended the Alaska Native Claims Settlement Act including:

1. cash, including cash dividends on stock received from a Native Corporation, to the extent that it does not, in the aggregate, exceed $2000 per individual per calendar year;

2. stock, including stock issued or distributed by a Native Corporation as a dividend or distribution of stock;

3. a partnership interest;

4. land or an interest in land, including land or an interest in land received from a Native Corporation as a dividend or distribution on stock; or

5. an interest in a settlement trust.

AE. Payments made pursuant to the Maine Indian Claims Settlement Act of 1980 to a member of the Passamaquoddy Indian Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians.

AF. Payments made to a member of the Aroostook Band of Micmacs pursuant to the Aroostook Band of Micmacs Settlement Act.

AG. Financial assistance paid through the Disaster Relief Act of 1974 as amended by P. L. 100-707 in 1988 and provided as major disaster and emergency assistance. This disaster coverage is intended to provide relief to people living or working in an area severely struck by natural or man-made

Excluded Income

disaster. The disaster must have been so severe as to cause the President to designate a Federal Disaster Zone. Additional relief provided under these circumstances by states, local governments and disaster assistance organizations is also excluded.

AH. Bona fide loans.

Countable Income

5723 Countable Income (01/01/2006, 05-24)

Complete the following steps to determine countable income:

A. Constitute the Healthy Vermonters group according to the definition included in the rule 5720, Financial Need.

B. Determine the combined countable income for the Healthy Vermonters group, as constituted in (A) above.

C. Compare the result to the applicable income test for the Healthy Vermonters group size, as constituted in (A) above.

All otherwise eligible individuals in a Healthy Vermonters group who pass the income test are income-eligible for Healthy Vermonters.

Individuals potentially eligible for traditional Medicaid, such as pregnant women and children, have their eligibility determined under those rules but are considered members of the Healthy Vermonters group for purposes of determining the Healthy Vermonters group size and countable income.

Income Test

5724 Income Test (05/01/2010, 10-02)

Individuals are eligible for Healthy Vermonters if they have income no greater than 350 percent of the federal poverty level (FPL).

Individuals are also eligible for Healthy Vermonters if they have income no greater than 400 percent of the FPL and are: 65 or older; or disabled and eligible for social security disability benefits.

The income guidelines are updated annually on January 1 using a methodology similar to the one employed by the federal government in setting the FPLs. In years when the actual FPL exceeds ESD's income maximum, ESD will issue a second increase on April 1.

Eligibility Process

5730 Eligibility Process (07/01/2002, 02-18)

Eligibility for the Healthy Vermonters program includes the process described in the following subsections.

Application

5731 Application (07/01/2002, 02-18)

Between January 1 and June 15, individuals may apply for Healthy Vermonters by completing the application form provided in the state income tax return. The application form must be completed legibly and accurately, signed and dated by the applicant, and submitted to the Department of Taxes on or before June 15. The Department of Taxes shall perform such income verification by the Secretary as is requested and transmit applications to the department.

By signing or marking the rights and responsibilities statement on the application form, the applicant authorizes the department to verify any information on the form through collateral contacts such as the Internal Revenue Service or the Social Security Administration.

Applicants may also apply for the Healthy Vermonters program any time during the year by filing a Healthy Vermonters application with the Health Access Eligibility Unit (HAEU) or an ESD district office. Applicants must provide information about their situation relevant to the tests for eligibility (rule 5710). Applications are date-stamped to assure that earlier applications are acted upon first. Applicants found eligible for VScript (including VScript Expanded) will be automatically enrolled in Healthy Vermonters.

Applicants must furnish their social security numbers or apply for a social security number unless they substantiate membership in a religious organization that objects to the use of a social security number. An applicant who substantiates membership in such an organization shall be given an alternate identification number.

Verification of the information provided is not generally required of the applicant or beneficiary unless it is questionable, verification is outstanding for another benefit program, or the applicant or beneficiary has refused to provide a social security number because of a religious objection. Social security numbers are used to verify information through tape matches. Clients are notified on the application form of the verification actions the department may take, including the use of verification obtained for other department programs, randomly selected quality control reviews, and the penalties for fraudulent reporting of their situation.

Application Decision

5732 Application Decision (07/01/2002, 02-18)

The Health Access Eligibility Unit (HAEU) or department district office must make an eligibility decision within 30 days of the date the application is received.

An applicant will be sent a notice regarding the action being taken on the application . An applicant who is denied will be sent a denial notice that includes the reason for the denial and the applicant's appeal rights. An applicant with countable income over the income maximum (rule 5724) shall be denied and may reapply at any time.

Eligibility Period

5733 Eligibility Period (07/01/2002, 02-18)

Eligibility for individuals who do not receive VScript begins the date of eligibility approval and ends June 30 unless the individual fails to meet a program requirement, in which case eligibility ends 11 days after the department sends the individual a notice of closure. Eligibility for individuals granted Healthy Vermonters coverage who receive VScript begins the date of eligibility approval and ends June 30.

If Healthy Vermonters eligibility begins on or after January 1 but no later than June 30, coverage continues through June 30 of the following year. If Healthy Vermonters eligibility begins on or after July 1 but no later than December 31, coverage continues through June 30 of the next year.

For coverage to continue beyond the June 30 closure date, all beneficiaries must file a new application and be found eligible.

Termination

5734 Termination (07/01/2002, 02-18)

When beneficiaries become ineligible by failing to meet program requirements, the department must mail them a notice of decision regarding the termination at least 11 days before the effective date of termination, unless the department confirms beneficiaries:

A. have moved out of state;

B. have been admitted to an institution where they are ineligible for further services;

C. have voluntarily withdrawn from the program;

D. were found to be ineligible on the date coverage began;

E. are no longer in contact with the department, and department notices to the beneficiary are returned by the post office indicating no forwarding address; or

F. have died.

Reporting Changes

5735 Reporting Changes (07/01/2007, 06-05)

Applicants and beneficiaries must report changes in income and household composition within 10 days after learning of the change. They must also notify the Department within 10 days after they:

A. become eligible for insurance or other assistance covering prescription drugs;

B. no longer meet state residency requirements (rule 5713);

C. are incarcerated; or

D. have a change of address.

Identification Document

5736 Identification Document (07/01/2007, 06-05)

The Department shall provide each eligible Healthy Vermonters individual with an identification card. This identification card may be used only at participating pharmacies as defined at rule 5744.

Application for Other Benefits

5737 Application for Other Benefits (07/01/2007, 06-05)

Individuals accepted into the Healthy Vermonters program may apply for the traditional Medicaid program or any other health care program at any time.

Individuals who wish to apply for traditional Medicaid or other benefits available through the Department must file an application as required under those programs.

Right to Appeal

5738 Right to Appeal (07/01/2007, 06-05)

The Department will provide applicants and beneficiaries with notices whenever they are found ineligible for the Healthy Vermonters program or when the services they may receive under the Healthy Vermonters program are denied, reduced or discontinued. The notice shall include a statement of the intended action, the reason for the action and an explanation of the individual's right to request an internal managed care organization ("MCO") appeal and a fair hearing before the Human Services Board. Appeals regarding denials of eligibility will not be entitled to an internal MCO appeal.

Regarding eligibility issues, a request for a fair hearing must be made within ninety (90) days of the date the notice of the decision being appealed was mailed. A request for a hearing is defined as a clear expression, oral or written, that the individual wishes to appeal a decision or that he/she wants an opportunity to present his/her case to a higher authority.

Regarding issues of coverage, a beneficiary may utilize the internal MCO appeal process (see rule 7110.2) while a fair hearing is pending or before a fair hearing is requested (see rule 7110.3). Fair hearings or MCO appeals must be filed within 90 days of the date the notice of action was mailed by the MCO, or if no mailing, within 90 days after the action occurred. A request for a fair hearing challenging an MCO appeal decision must be made within ninety (90) days of the date the original notice of the MCO decision being appealed was made, or within thirty (30) days of the date the notice of the MCO decision being appealed was mailed.

When beneficiaries appeal a decision to end Healthy Vermonters coverage, they have the right, under certain conditions, to have benefits continue without change until the appeal or fair hearing is decided provided the beneficiary has requested an appeal before the effective date of the change.

Continuation of benefits without change does not apply when the appeal is based solely on a reduction or elimination of a benefit required by federal or state law affecting some or all beneficiaries, or when the decision does not require the minimum advance notice (see rule 4150).

Beneficiaries who waive their right to continued benefits will be reimbursed for out-of-pocket expenses for covered services provided during the appeal period in any case in which the Human Services Board reverses the decision.

Benefit

5740 Benefit (07/01/2002, 02-18)

Individuals eligible for this program receive assistance in purchasing covered drugs, defined at rule 5743, from participating pharmacies after payment of any required enrollment fee and coinsurance.

The amount of the benefit shall be the difference between the retail cost of the drug and the discounted cost.

The discounted cost shall be the price of the drug based on the Medicaid fee schedule, less payment by the state of at least 2 percent of the Medicaid rate, less the average rebate paid to the Medicaid program by pharmaceutical manufacturers for the prior state fiscal year, rounded down to the nearest whole or half dollar. The commissioner will establish the average rebate amount for each calendar year.

This discounted cost is subject to approval by the Centers for Medicare and Medicaid Services (CMS) of a research and demonstration program waiver under section 1115(a) of the Social Security Act. Until CMS approves the waiver, the discounted cost shall be the Medicaid rate.

Enrollment Fee

5741 Enrollment Fee (07/01/2002, 02-18)

For each calendar year, the commissioner shall set the required enrollment fee. Until CMS has approved the waiver, there will be no enrollment fee. When an enrollment fee is implemented, it will be per beneficiary, per year. It will be collected by requiring beneficiaries to pay an amount above the discounted price until the annual fee is reached.

Coinsurance Requirement

5742 Coinsurance Requirement (07/01/2002, 02-18)

The required coinsurance is the discounted cost of each prescription or refill. Each beneficiary shall be responsible for paying the required coinsurance and a participating pharmacy shall dispense a drug to an eligible beneficiary only upon payment of this coinsurance.

INTERPRETIVE MEMO

[X] Healthy Vermonters Rule Interpretation [ ] Healthy Vermonters Procedure Interpretation

This interpretive memo remains effective statewide until it is specifically supersededed–either by a subsequent interpretive memo or by a contradictory rule with a later date.

Reference 5743 **Date of this Memo** 01/01/2006 **Page** 1 of 1

This Memo: [X**] is New [ ] Replaces one dated** _____

QUESTION: If an individual is making a good faith effort to utilize the prescription drug plan's appeal process through the Independent Review Entity level, but the time frame has extended beyond 30 days, will the individual be deemed to have exhausted their appeal for purposes of being able to apply to OVHA for coverage of the drug?

ANSWER: Yes. The appeal process should continue while OVHA's decision is being made and while any coverage exists.

Coverage

5743 Coverage (07/01/2002, 02-18)

Prescription coverage is limited to drugs of manufacturers that have a rebate agreement in force.

Beneficiaries who are entitled to Medicare benefits under Part A or enrolled in Medicare Part B, and who live in the service area of a Part D plan, are defined under Medicare rules at 42 CFR §423.30 as eligible for Part D. Vermont is included in the service area for several Part D plans. According to 42 CFR §423.906, Medicare is the primary payer for covered drugs for Part D eligible individuals. HVP does not cover these drug classes.

Part D is administered either through a prescription drug plan (PDP) or as a component of Part C, Medicare managed care, in a Medicare Advantage – Prescription Drug benefit (MA-PD).

The only drug classes that Healthy Vermonters covers for those enrolled in a drug plan, if they are not covered by the PDP/MA-PD, are:

A. drugs when used for anorexia, weight loss, or weight gain (rule 7502.3);

B. single vitamins or minerals if the conditions described in rule 7502.4 are met;

C. over-the-counter prescription if the conditions described in rule 7502.5 are met;

D. barbiturates

E. benzodiazepines

If a Part D eligible individual elects not to enroll in a PDP/MA-PD plan, or discontinues enrollment in such a plan, coverage for these drugs will end.

When an individual appeals a denial of a drugs coverage under a Part D or Part C plan, and has exhausted the plans appeal process through the IRE (Independent Review Entity) decision level, or the plans transition plan as approved by the Centers for Medicare and Medicaid Services (CMS), the individual may apply to the Office of Vermont Health Access for the Healthy Vermonters benefit for the drug. If the individuals prescriber can document medical necessity in a manner established by the director of the Office of Vermont Health Access (OVHA), and the process for documentation conforms with the pharmacy best practice and cost control program established under subchapter 5 of chapter 19 of Title 33, the drug shall be allowed under Healthy Vermonters.

At the beginning of coverage under Medicare Part D, when an HVP-eligible individual has applied for and has attempted to enroll in a Part D or Part C plan and has not yet received coverage due to an operational problem with Medicare, or has otherwise not received coverage for the needed pharmaceutical, the necessary drugs will be covered, if OVHA finds that good cause and a hardship exist, until such time as the operational problem, good cause and hardship ends. The individual must have made every reasonable effort with CMS and the PDP, given the individual's circumstances, to obtain coverage. The intent of the good cause and hardship exception is remedial in nature and shall be interpreted accordingly. In general "good cause" shall include instances where the lack of coverage can not reasonably be considered the fault of the individual, and "hardship" shall include circumstances where alternative means for the coverage at issue are not reasonably available or will likely result in irreparable loss or serious harm to the individual. OVHA will make determinations of whether or not operational problems, good cause, or hardship exists for purposes of coverage.

5744 Participating Pharmacy (07/01/2002, 02-18)

"Pharmacy" means a retail or institutional drug outlet licensed by the Vermont State Board of Pharmacy pursuant to chapter 36 of Title 26, or by an equivalent board in another state, that sells prescription drugs at retail and has a written enrollment agreement with the state to dispense drugs.

A provider must:

A. satisfactorily complete and submit the standard enrollment form to the Office of Vermont Health Access;

B. conform to the standards of the Vermont State Board of Pharmacy and other federal and state statutes and regulations applicable to the dispensing of prescription drugs to the general public;

C. agree to provide reasonable access to records necessary to comply with the provisions for program review set forth in the Provider Agreement;

D. never deny services to, or otherwise discriminate against persons on the basis of race, color, sex, age, religious preference, national origin, handicap or sexual orientation; and

E. take appropriate steps to prevent the wrong utilization of prescription drugs, with special concern for the potentially dangerous interaction of two or more prescription drugs from different prescribers.