

# P A T H

## Department of Prevention, Assistance, Transition, and Health Access

**BULLETIN NO. 00-23F**

**FROM** Eileen I. Elliott, Commissioner  
for the Secretary

**DATE** December 15, 2000

**SUBJECTS** Vermont Health Access Plan  
Pharmacy Discount Program (VHAP-PDP)

**CHANGES ADOPTED EFFECTIVE** 1/1/01

### INSTRUCTIONS

       Maintain Manual - See instructions below.  
  X   Proposed Regulation - Retain bulletin  
and attachments until you receive  
Manual Maintenance Bulletin: \_\_\_\_\_  
       Information or Instructions - Retain  
until \_\_\_\_\_

**MANUAL REFERENCE(S)**

3400

This bulletin establishes the Vermont Health Access Plan Pharmacy Discount Program (VHAP-PDP) as authorized by Act 152 (2000), the fiscal year 2001 budget act for the support of government. The implementation of VHAP-PDP is summarized below.

The budget act authorizes a new program, the Vermont Health Access Plan Pharmacy Discount Program (VHAP-PDP), to enable beneficiaries to purchase prescription medicines at a discount to maintain their health and prevent unnecessary medical problems. VHAP-PDP is available to Medicare beneficiaries with household incomes greater than 150 percent of the federal poverty level (FPL) with no policy covering prescription drugs and to other individuals with household incomes up to 300 percent of the FPL and no insurance policy covering prescription drugs. VHAP-PDP provides a pharmacy discount based on the Medicaid fee schedule and the rebate received by the state from drug manufacturers.

The annual enrollment fee for VHAP-PDP will be set each year by the commissioner. The commissioner will notify VHAP-PDP beneficiaries in advance of any change in the annual enrollment fee. Based upon estimates of enrollment and administrative costs, the enrollment fee for calendar year 2001 will be \$24. Enrollment fees will be collected by a reduction of the discount for the first eight prescriptions a beneficiary purchases while receiving VHAP-PDP. However, enrollment fees will not be charged on prescriptions costing less than \$20.

The Health Care Financing Administration approved the creation of VHAP-PDP under Vermont's Section 1115 (a) research and demonstration program, the Vermont Health Access Plan, on November 3, 2000. As a condition of approval, HCFA required the department to add the following language to VHAP-PDP policy: "In the event that manufacturers' rebates are not available on a timely basis, the State will be allowed to limit its liabilities by: a) ceasing to enroll new applicants in VHAP-PDP; or b) modifying or suspending the subsidy amount for current or new enrollees, following written notice to the Health Care Financing Administration."

*Specific Changes to Policy Pages*

3400 to 3405 Creates the VHAP-PDP; implementation is subject to approval by the Health Care Financing Administration.

Since the filing of the proposed rule, the waiver amendment requesting approval to implement the VHAP-PDP was approved by the Health Care Financing Administration on November 3, 2000. Therefore, all references to the need for approval from HCFA and that implementation will occur as soon as administratively possible have been deleted throughout this document and the policy pages.

The following additional changes have been made to the policy pages since the filing of the proposed rule:

- 3400 Deleted the need for approval by HCFA because approval was received on November 3, 2000.
- 3401.1 Clarified the section by adding the term “program benefit.”
- 3401.5 Deleted this section because its content is also found at 3401.5.
- 3401.6 Renumbered to 3401.5.
- 3401.61 Renumbered to 3401.51 and changed “VHAP” group to “VHAP-PDP” throughout the section.
- 3401.62 Renumbered to 3401.52 and added certain payments to victims of Nazi persecution to the list of excluded income.
- 3401.63 Renumbered to 3401.53 and changed the reference to section 3401.7 to 3401.6.
- 3401.64 Renumbered to 3401.54.
- 3402.1 Added language clarifying the application process.
- 3402.2 Changed Vermont Health Access Eligibility Unit to Health Access Eligibility Unit (HAEU).
- 3402.3 Deleted a duplication of the sentence, “The notice of decision must be mailed at least 11 days before termination takes effect.”
- 3402.4 Added language clarifying the eligibility review process and renamed the section.
- 3403.1 Added language required by HCFA specifying the actions Vermont may take to limit its liability in the event that manufacturers’ rebates are not available on a timely basis.
- 3403.2 Added language specifying that an enrollment fee would be charged in partial payments of \$3.00 per prescription (via a \$3.00 reduction in the discount) on prescriptions that cost \$20 or more.

A public hearing was held on October 23, 2000, at 1:00 p.m., in the Skylight Conference Room, State Office Complex, Waterbury. No one from the public attended.

Written comments were submitted by on behalf of the Community of Vermont Elders, the Office of Vermont Health Ombudsman and the Vermont Coalition for Disability Rights.

*The written comments and the department's responses to them are summarized below.*

3400

**Comment:** Two commenters asked the department to publish a PP&D memo when HCFA approves Vermont's VHAP-PDP waiver amendment and the program goes into effect.

**Response:** The department is pleased to announce that HCFA approved the implementation of VHAP-PDP through Vermont's 1115 (a) research and demonstration program, the Vermont Health Access Plan (VHAP), on November 3, 2000. The department will accept applications for this program beginning December 1, 2000, and benefits begin January 1, 2001. Policy has been changed to reflect this approval.

**Comment:** One commenter asserts that the department has taken inconsistent positions regarding the income eligibility guidelines it will use for VHAP-PDP. The commenter states that the budget passed by the legislature establishes VHAP-PDP eligibility for Medicare beneficiaries with income at or above 175 percent of the federal poverty level (FPL), while the waiver request submitted to HCFA expands it to include those with income between 150 and 175 percent of FPL. In addition, memos submitted to the House Appropriations Committee from Secretary Kitchel limit eligibility to Medicare beneficiaries with income at or above 175 percent of FPL.

**Response:** Income eligibility for VHAP-PDP will begin at 150 percent of the FPL. While the legislative language in the budget act states that beneficiaries with income at or above 175 percent of FPL will be eligible for VHAP-PDP, the language of the 1115(a) waiver approved by HCFA states that individuals with Medicare and incomes of 150 percent of the FPL and above will be eligible to receive VHAP-PDP for their acute care medications. The department has expanded its policy to include those beneficiaries with income from 150 percent up to but not including 175 percent of FPL who would otherwise not receive a discount on their acute care prescription medications.

**Comment:** One commenter asserts that the language stating that VHAP-PDP is only eligible to individuals "with no insurance coverage for prescription drugs" should be changed to "with no Medigap policy" to be consistent with the budget act.

**Response:** The department replies that the use of the term "Medigap" in the budget act was a drafting error that does not reflect legislative intent. The department has detailed its position in a letter from Commissioner Elliott to the Health Access Oversight Committee dated August 17, 2000, included with the final proposed filing of this rule.

**Comment:** Two commenters state that the description of the coverage for VScript beneficiaries should be modified to reflect the language of the budget act. One commenter states that VScript beneficiaries should be eligible for half of the rebate amount on their acute care drugs. Another commenter argues that VScript beneficiaries should be eligible for the entire VHAP-PDP benefit.

The department asserts that these interpretations are based on erroneous use of the term “Medigap” in the budget act rather than “other coverage” including VScript. This was the result of a drafting error and does not reflect legislative intent.

Response: The department has detailed its position in a letter from Commissioner Elliott to the Health Access Oversight Committee dated August 17, 2000, included with the final proposed filing of this rule.

Since the filing of the final proposed rule, the Joint Legislative Committee on Administrative Rules objects to the scope of the VHAP-PDP benefit given to VScript beneficiaries. Specifically, the Joint Legislative Committee on Administrative Rules asserts that VScript beneficiaries are entitled to an additional nine percent discount on their prescription maintenance medications and that the policy written by the department is contrary to their understanding of legislative intent.

The policy reflects the department’s understanding of legislative intent. Furthermore, the department’s interpretation of legislative intent is supported by the lack of funding appropriated to support the additional discount to VScript beneficiaries, materials submitted to the legislature describing the program, and the waiver amendment filed with the Health Care Financing Administration.

Comment: One commenter asserts that the department may have meant the term “Medigap” to mean any other insurance policy with prescription coverage. However, the plain meaning of “Medigap” would not include any state health care program. Three commenters assert the language in statute extends the VHAP-PDP benefit to VScript beneficiaries for the coverage of maintenance drugs, as well as acute care drugs.

Response: The department asserts that the use of the term “Medigap,” instead of “other coverage,” was a drafting error and does not reflect legislative intent. The department has detailed its position in a letter from Commissioner Elliott to the Health Access Oversight Committee dated August 17, 2000, included with the final proposed filing of this rule.

3402.5

Comment: One commenter states that the requirement for Medicare beneficiaries to notify the department when they “become eligible for insurance or other assistance covering prescription drugs” is overly broad and inconsistent with the budget act and that the requirement should be limited to reporting coverage under Medigap policies that cover prescriptions. The commenter asserts that VHAP-PDP benefits should not be terminated by reason of VScript coverage.

Response: The department has responded to this comment in a letter from Commissioner Elliott to the Health Access Oversight Committee dated August 17, 2000, included with the final proposed filing of this rule.

VHAP-PDP benefits will not be terminated if an individual receives VScript coverage. The individual will receive the VHAP-PDP benefit on drugs not covered by the VScript

program. In addition, individuals found eligible for VScript will be automatically enrolled in VHAP-PDP.

3402.7

**Comment:** One commenter asked the department to integrate the VHAP-PDP application with applications for other programs so that applicants and beneficiaries need to complete only one application to receive benefits from any of the programs. Another commenter asserted, "Although applicants for Medicaid must submit additional information not required for the other health care programs, an application for VHAP-PDP should be considered a preliminary application for Medicaid for purposes of establishing the application date, so long as additional information needed for a determination of Medicaid eligibility is provided later."

**Response:** The department has added VHAP-PDP to the application for its other pharmacy programs and beneficiaries found eligible for VScript will be found automatically eligible for VHAP-PDP.

The VHAP-PDP is a program operated under the provisions of Vermont's 1115(a) demonstration waiver. As such it is not an entitlement. Administrative costs must be met by the program's annual fee. The department indicated in its testimony to the legislature that VHAP-PDP would be a stand-alone program. It has been the department's plan to process VHAP-PDP applications as it processes applications for the VHAP-RX and VScript Programs. In response to this comment the department is examining the cost implications of linking VHAP-PDP to its other health care programs and will give an update of the findings to the Legislative Committee on Administrative Rules (*LCAR*).

**Comment:** One commenter requests that VHAP-PDP applications be put in the state tax booklets with the other state pharmacy program applications.

**Response:** The department has added VHAP-PDP to the application for other state pharmacy programs found in the tax booklet.

3403.2

**Comment:** One commenter stated that the fees of \$24 for calendar years 2000 and 2001 seem high in relation to fees for programs that provide far greater benefits and in relation to the costs to the department for implementing this program.

**Response:** The initial fee of \$24 per calendar year is based upon the department's projected administrative costs of providing VHAP-PDP.

**Comment:** One commenter asserted that the requirement of an annual enrollment fee from each individual is unusual and significantly undercuts the legislative intent of the program to provide financial help for households experiencing high prescription drug costs. The commenter points out that Dr. Dynasaur program fees are lower than the proposed VHAP-PDP fee because they are paid by the household not the individual.

Response: The department set the annual enrollment fee of \$24 per calendar year for 2001 based on the projected administrative costs of providing the program. The annual enrollment fee for VHAP-PDP may be adjusted if necessary. The fee will be collected as prescriptions are filled and will not be charged on prescriptions under \$20.00.

3405

Comment: One commenter requested that the department clearly state that VHAP-PDP does not require the purchase of a 90-day supply of medication.

Response: Provisions in 3404 are consistent with the department's other health care programs and the language states that a beneficiary cannot fill a prescription for less than a 30-day period or more than a 90-day period. However, there is an exception that allows for prescriptions to be written for less than 30 days if the beneficiary has extenuating circumstances. The policy here is not intended to be different from or change the policy of the existing programs.

Comment: One commenter requested the department's reason for not filling more than five refills per prescription per year, if the prescription is written by a doctor.

Response: The purpose of limiting refills to five in a year is to ensure that a patient's condition and need for the prescription is monitored and evaluated by a physician. If the physician writes another prescription for the medication following that evaluation, it will be filled. The department did commit to creating a PP&D to further clarify this policy question.

Comment: One commenter stated that the department should follow the reproductive health equity mandate passed by the legislature in 1999 and cover contraceptive devices and supplies.

Response: VHAP-PDP is a prescription drug benefit, not a health insurance plan. As such it will only cover contraceptives that are prescription drugs.

***Review by the Joint Legislative Committee on Administrative Rules (LCAR)***

At its meeting on December 6, 2000, the LCAR objected to that portion of these regulations that do not extend the rebate benefit to maintenance drugs for VScript beneficiaries (§3400). The department has responded to this objection by letter, a copy of which has been attached to the materials filed with the Secretary of State and the LCAR. In addition, this objection has been noted on page 3400 of these regulations.

Vertical lines in the left margin indicate significant changes. Dotted lines at the left indicate changes to clarify, rearrange, correct references, etc., without changing regulation content.

**MANUAL MAINTENANCE**

MANUAL HOLDERS: Please maintain manuals assigned to you as follows.  
 You will need both the proposed and the final bulletin to maintain  
 Your manuals

Medicaid Policy

<u>Remove</u>		<u>Insert</u>
Nothing	TOC P. 1 (3400)	(00-23F)
Nothing	3400	(00-23F)
Nothing	3401.2	(00-23F)
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3400

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3400     Introduction

Legislation authorizing the Vermont Health Access Plan Pharmacy Discount Program was enacted May 29, 2000. By providing a pharmacy discount, the program helps beneficiaries purchase prescription medicines necessary to maintain their health and prevent unnecessary health problems.

The VHAP-PDP benefit reduces consumer cost by using the Medicaid fee schedule and a discount equal to the average rebate to the state from drug manufacturers in the prior fiscal year rounded down to the nearest whole or half number.

VHAP-PDP provides the pharmacy discount to certain individuals with no insurance policy or program benefit that includes prescription drug coverage. Eligible individuals must be:

- Medicare beneficiaries with household incomes greater than 150 percent of the federal poverty level; or
- members of households with income no greater than 300 percent of the federal poverty level.

Individuals covered under VHAP (both limited and managed care) or VHAP-Pharmacy are not eligible for VHAP-PDP. Individuals covered under VScript are eligible for VHAP-PDP coverage of prescription drugs excluded from VScript coverage, if they are otherwise eligible for VHAP-PDP.\*

The policies that follow describe this pharmacy program, which is called VHAP-PDP.

3401     Eligibility

An individual must meet all of the following requirements (3401.1-3401.64) to be found eligible for this program. To remain eligible an individual must meet all program requirements.

3401.1     Uninsured

An individual must be uninsured for prescription drugs to be eligible. Individuals are considered uninsured if they have no insurance policy or program benefit that includes prescription drug coverage. Individuals covered by VHAP (both limited and managed care) or VHAP-Pharmacy are considered insured. Individuals covered by VScript are considered uninsured for drugs excluded from coverage under 3202.\*

\*Note: The Joint Legislative Committee on Administrative Rules objects to the two sentences describing the VHAP-PDP benefit that is available to VScript beneficiaries.

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3401      Eligibility (Continued)

3401.2      Citizenship

Individuals are considered citizens if they meet at least one of the following two criteria:

- (1) The individual is a native-born or naturalized U.S. citizen. For purposes of qualifying as a United States citizen, the United States, as defined in the Immigration and Nationality Act, includes the 50 States, the District of Columbia, Puerto Rico, Guam, Virgin Islands, and the Northern Mariana Islands. Nationals from American Samoa or Swain's Island also are regarded as United States citizens for purposes of VHAP-PDP.
- (2) The individual is a resident alien lawfully admitted for permanent residence or permanently residing in the U.S. under color of law, including any alien who is lawfully present in the U.S. under the authority of Sections 203(a)7 or 212(d)(5) of the Immigration and Nationality Act. (See Welfare Procedures Manual for documentation requirements.)

3401.3      State Residence

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 VHAP-PDP:

- 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.

3401.4      Living Arrangement

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.

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3401 Eligibility (Continued)

3401.5 Financial Need of a VHAP-PDP Group

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

A VHAP-PDP group includes all of the following individuals, if living in the same home:

- a. the VHAP-PDP applicant and the applicant's spouse;
- b. children under age 21 of the applicant or spouse;
- c. siblings under age 21, including halfsiblings 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 VHAP-PDP group shall not include any individual eligible for and receiving SSI/AABD benefits. In addition, the income of all SSI/AABD beneficiaries living in the household shall not be considered in determining whether the VHAP-PDP group passes the income test for VHAP-PDP.

The VHAP-PDP group shall not include any individual eligible for and receiving ANFC benefits. In addition, the income (including the ANFC assistance payment) of all ANFC beneficiaries living in the household shall not be considered in determining whether the VHAP-PDP group passes the income test for VHAP-PDP.

Individuals must take all necessary steps to obtain any annuities, pensions, retirement, disability benefits or other income to which they may be entitled, unless they can show good cause for not doing so. Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensation and pensions; Old-Age, Survivors, and Disability Insurance (OASDI) benefits; railroad retirement benefits; and unemployment compensation. Individuals are not required to apply for cash assistance programs such as SSI/AABD or ANFC.

3401.51 Countable Income

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 changes have occurred or are expected to occur and 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.

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3401 Eligibility (Continued)

3401.51 Countable Income (Continued)

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 VHAP-PDP 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 that is received for a specific purpose, such as the payment of medical bills or funeral costs, and is used for the stated purpose 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 3401.72 # 23 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 (stationary or fixed) property or personal property.

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3401 Eligibility (Continued)

3401.51 Countable Income (Continued)

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 that is 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 prior to 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:

- Business expenses (self-employment only)
- Standard employment expense deduction
- 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:

1. Office or shop rental; taxes on farm or business property;
2. Hired help;

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3401 Eligibility (Continued)

3401.51 Countable Income (Continued)

3. Interest on business loans; and
4. 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 VHAP-PDP 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 Department of Social and Rehabilitation Services. 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 VHAP-PDP 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 VHAP-PDP group receives from the roomer/boarder for lodging/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.)

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 VHAP-PDP group who is employed or self-employed.

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3401 Eligibility (Continued)

3401.51 Countable Income (Continued)

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 VHAP-PDP group who is an incapacitated adult or a child age two years or older, and up to a maximum of \$200 per month for the care of each child under two years of age who is a member of the VHAP-PDP group.

Dependent care expenses for the care of a child are not deducted unless the child requiring care is a member of the VHAP-PDP group or is not a member of the VHAP-PDP group solely because the child is an SSI/AABD or an ANFC 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 VHAP-PDP group, by the child's parent (biological, adoptive, or stepparent) or legal guardian, or the incapacitated adult's spouse 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 (where applicable) is either unavailable, or available but unable to provide the necessary care due to incapacity. Incapacity shall be determined in accordance with the process used to determine whether a parent applying for or receiving ANFC is incapacitated (see WAM 2332.1). This process shall give appropriate consideration to the treating physician's opinion. A spouse employed during the time care is required is considered unavailable.

If dependent care is required for reasons other than employment (e.g., protective services child care or care for training purposes), the client shall be referred to SRS.

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3401     Eligibility (Continued)

3401.52    Excluded Income

1.    Any income received by a beneficiary of SSI/AABD or ANFC living in the VHAP-PDP household.
2.    All income to an undergraduate student (including parents or children in the VHAP-PDP group) from student grants, loans, or work study if:
  - a.    such loans or grants are made under a program administered or insured by the U.S. Secretary of Education; or
  - b.    the sponsor of the grant or loan precludes its use for maintenance purposes; or
  - c.    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.

3.    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:

- a.    Federal Pell Grants.
- b.    Federal Supplemental Educational Opportunity Grants (SEOG).
- c.    State Student Incentive Grants (SSIG).
- d.    Federal College Work Study (CWSP).
- e.    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 # 4).
- f.    Educational loans under the federal Family Educational Loan Program or the federal Direct Student Loans Program (Stafford or PLUS loans).

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3401      Eligibility (Continued)

3401.52      Excluded Income (Continued)

4.      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:
  - a.      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/beneficiary; and
  - b.      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.
5.      Reimbursements for expenses (such as child or dependent care, transportation, purchase or maintenance of clothing, and meals) attributable to participation in unpaid voluntary activities, including the value of meals provided during the course of these activities.
6.      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 VHAP-PDP group toward the support of a person outside the group. The payment amount is deducted first from the VHAP-PDP group's countable earned income, with any balance deducted from unearned income.
7.      The value of food stamp benefits under the Food Stamp Act of 1977.
8.      The value of foods donated by the U. S. Department of Agriculture (surplus commodities).
9.      Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
10.     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; less than full-time employment is work that involves fewer than 100 hours per month.

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3401      Eligibility (Continued)

3401.52      Excluded Income (Continued)

11. Monthly income of any child (see definition of child at 10. above) from any program carried out under the Job Training Partnership Act (JTPA). This applies to earned or unearned income, except that, in the case of earned income, this disregard may not exceed six months per calendar year.

This income cannot be disregarded for adults.

The \$10 per day allowance given to individuals in JTPA training is always disregarded as income for both children and adults.

12. Payments for support services and/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.
13. 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.
14. The tax-exempt portions of payments made pursuant to P.L. 92-203 (Alaska Native Claims Settlement Act of 1973).
15. 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.
16. Payments received for the care of foster children in the custody of, and placed by, the Department of Social and Rehabilitation Services. The rate of payment is established to cover expenses only, with no profit available; therefore, no income is considered available from this source.
17. Experimental Housing Allowance Program payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under the U.S. Housing Act of 1937, as amended.
18. 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.
19. Any benefits received under Title VII, Nutrition Program for the Elderly, of the Older American Act of 1965, as amended.

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3401      Eligibility (Continued)

3401.52      Excluded Income (Continued)

20. 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).
21. Receipts distributed to members of certain Indian tribes referred to in Section 5 of P.L. 94-114, which became effective October 17, 1975.
22. Any income received from an emergency fuel supplement or energy allowance to assist with the cost of heating.
23. The first \$50 in child support payments made by a noncustodial parent on behalf of a VHAP-PDP group member within each calendar month. When more than one noncustodial parent makes child support payments on behalf of a single VHAP-PDP group in the same calendar month, the maximum amount of child support to be disregarded in determining the VHAP-PDP group's eligibility is \$50.
24. Payments to persons of Japanese or Aleut ancestry as restitution for injustices suffered during the Second World War.
25. 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.
26. Federal Earned Income Tax Credit (EITC), whether received with each paycheck or as a refund (lump sum).
27. Payments made from the Agent Orange Settlement Fund or any other fund established because of the Agent Orange product liability litigation.
28. Payments made pursuant to the Radiation Exposure Compensation Act (P.L. 101-426).
29. 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.
30. 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.

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3401      Eligibility (Continued)

3401.52      Excluded Income (Continued)

31. Distributions made under P.L. 100-241, which amended the Alaska Native Claims Settlement Act:
  - a. 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; or
  - b. stock, including stock issued or distributed by a Native Corporation as a dividend or distribution of stock; or
  - c. a partnership interest; or
  - d. 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
  - e. an interest in a settlement trust.
32. 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.
33. Payments made to a member of the Aroostook Band of Micmacs pursuant to the Aroostook Band of Micmacs Settlement Act.
34. 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 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.
35. Bona fide loans.

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3401     Eligibility (Continued)

3401.53    Determining Countable Income

Complete the following steps to determine countable income:

- I.     Constitute the VHAP-PDP group according to the definition included in the Financial Need of a VHAP-PDP Group (3401.5) section.
- II.    Determine the combined countable income for the VHAP-PDP group, as constituted in step I above.
- III.   Compare the result to the applicable income test for the VHAP-PDP group size, as constituted at step I above.

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

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 VHAP-PDP group for purposes of determining the VHAP-PDP group size and countable income.

3401.54     Income Test

To be eligible, the countable income of an individual's VHAP-PDP group must be:

- above 150 percent of the federal poverty level (FPL), if the individual is covered by Medicare; or
- less than or equal to 300 percent of the FPL.

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3402 Eligibility Process

Individuals accepted into the VHAP-PDP program may apply for the traditional Medicaid program or any other health care program at any time.

3402.1 Application

Between January 1 and June 15, individuals may apply for VHAP-RX, VScript, or VHAP-PDP by completing the combined 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 the applicant's spouse, 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/marketing 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 VHAP-PDP program any time during the year by filing a combined VHAP-RX, VScript, and VHAP-PDP application with the Health Access Eligibility Unit (HAEU) or a PATH district office. Applicants must provide information about their situation relevant to the tests for eligibility (Section 3401). Applications are date-stamped to assure that earlier applications are acted upon first. Applicants found eligible for VScript will be automatically enrolled in VHAP-PDP for drugs not covered by VScript.

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.

3402.2 Application Decision

An eligibility decision must be made within 30 days of the date the application is received by the Health Access Eligibility Unit (HAEU) or department district office. An applicant with countable income over the income test shall be denied and may reapply at any time.

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.

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3402     Eligibility Process

3402.3    Period of Eligibility

Eligibility begins the date of eligibility approval and ends June 30 of the following year unless the individual has filed a new application for the program and been found eligible.

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

Individuals without Medicare must file a new application each year and be found eligible for VHAP-PDP in order for coverage to continue beyond these dates. Individuals with Medicare are not required to file a new application each year to remain eligible.

3402.4    Termination of Eligibility

When beneficiaries become ineligible by failing to meet program requirements, the department must send them a notice of termination at least 11 days before the effective date of termination. The notice of decision must be mailed at least 11 days before the effective date of termination, unless the department confirms beneficiaries have:

- been granted health care benefits in another state;
- been admitted to an institution where they are ineligible for further services;
- given the department a written statement indicating they no longer wish to receive services;
- given information that requires termination or reduction of services and indicated they understand termination shall be the consequence of supplying that information;
- unknown whereabouts, and the post office returns agency mail directed to the beneficiary indicating no forwarding address; or
- died.

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3402.5

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3402     Eligibility Process

3402.5    Requirement to Report Changes

Beneficiaries without Medicare must report changes in income and household composition within 10 days.

All applicants and beneficiaries must notify the department within 10 days when they:

- become eligible for insurance or other assistance covering prescription drugs;
- no longer meet state residency requirements (3401.3)
- are incarcerated; or
- have a change of address.

3402.6    Identification Document

The department shall provide each eligible VHAP-PDP individual with an identification card.

3402.7    Application for Other Benefits

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

3402.8    Right to Appeal

Applicants and beneficiaries shall be provided by the department with notices whenever an individual is found ineligible for the VHAP-PDP program or when the services they may receive under the VHAP-PDP program are 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 a fair hearing before the Human Services Board.

A request for a fair hearing must be made within 90 days of the date the notice of the decision being appealed was mailed.

Coverage in the VHAP-PDP program continues during the appeal period, provided the beneficiary has requested a hearing before the effective date of the termination. Beneficiaries who waive their right to continued benefits will be reimbursed by the department for out-of-pocket expenses for covered services provided during the appeal process in any case in which the Human Services Board reverses the decision.

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3402.9 Beneficiary Fraud Investigation

A person who knowingly gives false or misleading information or holds back needed information in order to obtain VHAP-PDP 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 department 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.

3403 Payment Conditions

3403.1 Program Benefit

Each beneficiary shall be responsible for part of each prescription or refill.

For each calendar year, the commissioner will establish the amount of cost-sharing for VHAP-PDP. The amount of cost-sharing shall be the Medicaid rate minus 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 number. The Medicaid rate minus the rebate equals the amount for which the beneficiary is responsible.

In the event that manufacturers' rebates are not available on a timely basis, the department will be allowed to limit its liabilities by:

- a) ceasing to enroll new applicants in VHAP-PDP; or
- b) modifying or suspending the subsidy amount for current or new enrollees, following written notice to the Health Care Financing Administration.

3403.2 Enrollment Fee

For each calendar year, the commissioner shall set the required enrollment fee. The fee shall be collected as a fixed amount per prescription or refill. Once the prescription or refill that satisfies the enrollment fee is reached, no additional fee will be collected. This enrollment fee will be collected as a reduction in the discount in the amount of \$3.00 per prescription or refill with a cost of \$20.00 or more. The initial enrollment fee will be \$24.00 per beneficiary, per calendar year.

3403.3 Coinsurance Requirement

Benefits under this program shall be subject to a coinsurance by the beneficiary. The coinsurance for the beneficiary shall be the Medicaid rate minus the rebate amount. A pharmacy shall dispense a drug to an eligible beneficiary upon payment of the required coinsurance.

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3403.4     Coverage

Individuals found eligible for this program receive prescription drugs from participating pharmacies at a discount based on the Medicaid fee schedule and a discount equal to the rebate received by the state from the drug manufacturers as calculated in 3403.1.

Prescription coverage is limited to drugs of manufacturers that participate in the federal drug rebate program.

3403.5     Participating Pharmacy

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

A provider must:

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

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;

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

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

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.

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3404      Prescribed Drugs

Pharmaceutical items include drugs that are obtained through appropriately licensed pharmacies. Payment for prescribed drugs is limited to:

registered Vermont pharmacies, including hospital pharmacies ;

pharmacies appropriately licensed in another state; or

physicians serving in areas without regular pharmacy services who have been granted special approval to bill these items directly.

Payment is limited to covered items furnished on written prescription of a duly licensed physician (Doctor of Medicine or Doctor of Osteopathy), dentist (Doctor of Dental Medicine or Doctor of Dental Surgery), podiatrist (Doctor of Podiatric Medicine, Doctor of Surgical Chiropody), nurse practitioner, nurse midwives, physician assistant or on a telephoned prescription processed in compliance with applicable federal and state statutes and regulations. For "brand certified" or "brand necessary" prescriptions, a written prescription in the prescriber's handwriting is required by the Office of Vermont Health Access. Any drug which is to be used continuously (e.g., daily, twice a day, every other day) for 30 days or more shall be prescribed and dispensed in an amount sufficient to treat the patient no fewer than 30 days and no more than 90 days at a time except medications that the patient takes or uses on an "as needed" basis. Up to five refills are permitted. If there are extenuating circumstances in an individual case that, in the judgment of the physician, dictate a shorter prescribing period, the supply may be for fewer than 30 days.

The pharmacist shall not fill a prescription in a quantity different from that prescribed by the physician if payment is to be made by VHAP-PDP, except in an individual case when the quantity has been changed in consultation with the physician.

Payment may be made for any preparation, except those unfavorably evaluated, either included or approved for inclusion in the latest edition of official drug compendia: the U.S. Pharmacopoeia, the National Formulary, the U.S. Homeopathic Pharmacopoeia, AMA Drug Evaluations, or Accepted Dental Therapeutics. These consist of "legend" drugs for which a prescription is required by state or federal law.

Physicians and pharmacists are required to conform to Act 127 (18-VSA-Chapter 91), otherwise known as the Generic Drug Bill. In those cases where the Generic Drug Bill permits substitution, only the lowest-priced equivalent in stock at the pharmacy shall be considered medically necessary.

If, in accordance with Act 127, the patient does not wish to accept substitution, VHAP-PDP will not pay for the prescription.

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3405      Benefit Coverage

Benefits are provided for:

- prescription medicines; and
- prescription contraceptive drugs.

Exclusions

No benefits are provided for:

- refills beyond the original prescription and five refills of that prescription within one year;
- hair replacement therapies;
- contraceptive devices or supplies;
- drugs for the sole purpose of fertility; and
- over-the-counter drugs and medicinals for which no prescription is required; and
- drugs by manufacturers that do not have a rebate agreement with the federal Health Care Financing Administration.