

P A T H

Department of Prevention, Assistance, Transition, and Health Access

BULLETIN NO. 02-18F

FROM Eileen I. Elliott, Commissioner
for the Secretary

DATE 6/28/02

SUBJECT Healthy Vermonters Program

CHANGES ADOPTED EFFECTIVE 7/1/02

INSTRUCTIONS

Maintain Manual - See instructions below.

Proposed Regulation - Retain bulletin and attachments until you receive Manual Maintenance Bulletin: _____

Information or Instructions - Retain until _____

MANUAL REFERENCE(S)

TOC 3400	3401	3403
3400	3402	

This bulletin establishes the Healthy Vermonters Program as authorized by Act 127 (2002), An Act Relating to Prescription Drug Cost Containment and Affordable Access. This program gives a discount to beneficiaries with no prescription drug coverage, or whose prescription drug coverage has reached its annual limit.

The Healthy Vermonters Program offers a discount from the retail price of prescriptions to individuals whose household income is less than or equal to 300 percent of the federal poverty level (FPL). It also offers the discount to individuals with household income less than or equal to 400 percent of the FPL, if they are age 65 and older; or disabled and eligible for Medicare or social security disability benefits.

The price paid by beneficiaries takes all three of the following reductions from the retail price into account. The discount gives beneficiaries the benefit of the Medicaid rate for prescriptions. In addition, the discounted price is reduced by:

- the state's payment of at least 2 percent of the price of the drug, and
- a rebate paid by manufacturers to the state for drugs purchased for Medicaid beneficiaries.

The department will be filing a request with the Centers for Medicare and Medicaid Services (CMS, formerly the Health Care Financing Administration) for a research and demonstration program waiver under 42 U.S.C. §1115(a) to implement the Healthy Vermonters program. The waiver will allow the department to include the manufacturers' rebate as part of the discount. Until CMS has approved the waiver, the department proposes to operate the program without federal waiver approval, giving beneficiaries the benefit of the price of the drug at the Medicaid rate.

The legislation authorizes the commissioner to establish an annual enrollment fee to support the costs of administering the program. Because the full benefit of the program will not take effect until CMS has approved the waiver, the commissioner will not establish an enrollment fee until that time. The commissioner will notify Healthy Vermonters beneficiaries before implementing an annual enrollment fee.

State legislation in 2000 created a similar program, which ended because of a successful lawsuit (Pharmaceutical Research and Manufacturers of America v. Thompson, 251 F.3d 219 (C.A.D.C. 2001)). To conform the Healthy Vermonters program discount to the direction in the court's ruling, this program, unlike the former one, includes payment by the state towards the cost of the prescription.

Expedited Rulemaking Process

The Vermont legislature, in the fiscal year 2003 budget bill, H. 766, making appropriations for the support of government, authorized the department to adopt the rules creating this program through an expeditious rulemaking process. The process requires the department to publish in three daily Vermont newspapers of highest average circulation a notice that lists all rules to be adopted by this process; allow for a seven-day public comment period; and file the final proposed rule with the secretary of state and the legislative committee on administrative rules no later than June 14, 2002. The final adopted rule has a July 1, 2002 effective date.

Summary of Written Comments and Department's Responses

Notice of rulemaking was published in *The Burlington Free Press*, *The Rutland Herald*, and *The Barre-Montpelier Times Argus* on June 6, 2002.

Three people submitted written comments on behalf of The Office of Health Care Ombudsman, the Vermont Coalition for Disability Rights, and The Community of Vermont Elders. These comments and the department's responses to them are summarized below.

Implementation Issues

The commenters had several questions about the operation of the program. Since these do not directly address this policy, the department will respond to these issues in a separate letter to the commenters.

3401.1

Comment Two commenters requested clarification about how expenditures the beneficiary made under the Healthy Vermonters program would be applied to the deductible in the VScript Expanded program, and whether the Healthy Vermonters program would cover the maintenance drugs in that program until the deductible is met.

Response The deductible for VScript Expanded is for expenditures for covered drugs. If a beneficiary uses the VScript Expanded card and the claim is denied because the deductible has not been met, the beneficiary pays the Healthy Vermonters rate and that amount is counted towards the deductible. If the drug were maintenance, the system would use the best coverage and keep adding to the deductible. If the drug were not maintenance, coverage would drop to Healthy Vermonters, and the beneficiary would be responsible for the allowed amount. Because non-maintenance drugs are not covered under VScript Expanded, the amount would not count towards the deductible, which applies only to maintenance drugs.

Comment One commenter suggested this section refer to an individual "without adequate health insurance" instead of "uninsured," making the language more consistent with the enabling law and the definition in the rule.

Response The department has revised the section to be consistent with the language of the law.

3401.5

Comment One commenter questioned the equity of the requirement to include elderly parents in the financially responsible group for children under 21 who may be disabled, because counting the parents' income may render the child ineligible, even though the child may be providing caregiving duties.

Another commenter questioned the equity of including parental income for an adult child living in the home caring for elderly parents.

Response As one commenter also points out, the rules for the Healthy Vermonters program are identical to the VHAP rules. The law establishing the program, H. 31, directs that income be calculated "as calculated under the rules of the Vermont health access plan, as amended."

As this commenter also points out, parents do not have financial responsibility for adult children; the rule includes only children under 21 in the group.

3401.52

Comment One commenter points out that this rule is almost identical to an old rule and asks about two sections that were apparently omitted, one excluding the income of children from a Job Training Partnership Act (JTPA) program, and the other an Experimental Housing Allowance Program payment.

Response The JTPA was superseded by the Workforce Investment Act of 1998, which is an entirely different program. The exclusion of payments under the Experimental Housing Allowance Program is still in the list of excluded income, at letter p.

3402.1, 3401.7

Comment Two commenters asked if the Healthy Vermonters program application will be merged with the all-inclusive pharmacy application.

Response The application for the other pharmacy programs has been revised to accommodate all four pharmacy programs, VHAP-Pharmacy, VScript, VScript Expanded and Healthy Vermonters.

3403.1, 3403.3

Comment One commenter asked that both these sections contain language stating that before CMS has approved the department's request for a waiver, the discounted rate will be the Medicaid rate, without the 2% expenditure by the state.

Response The discounted cost is defined in section 3403.1, which does include the qualification that until the waiver is approved, the discounted cost will be the Medicaid rate. The department believes that the definition is clear and is also in close proximity to section 3403.3, so it is unnecessary to repeat this definition in this section.

Comment One commenter suggests that the calculation of the discounted cost in this section be reworded to say "rounded down to the nearest whole or half dollar," instead of "number."

Response The department has made this change.

Manual Holders: Please maintain manuals assigned to you as follows.

Manual Maintenance

Remove

TOC P.1 (3400) (00-23F)
3400 – 3405 (00-23)
(20 Pages)

Insert

TOC P.1 (3400) (02-18)
3400-3403.5 (02-18)
(19 Pages)

3400	Introduction
3401	Eligibility
3401.1	Insurance coverage
3401.2	Citizenship
3401.3	State Residence
3401.4	Living Arrangement
3401.5	Financial Need
3401.51	Countable Income
3401.52	Excluded Income
3401.53	Determining Countable Income
3401.54	Income Test
3402	Eligibility Process
3402.1	Application
3402.2	Application Decision
3402.3	Period of Eligibility
3402.4	Termination of Eligibility
3402.5	Requirement to Report Changes
3402.6	Identification Document
3402.7	Application for Other Benefits
3402.8	Right to Appeal
3402.9	Beneficiary Fraud Investigation
3403	Payment Conditions
3403.1	Program Benefit
3403.2	Enrollment Fee
3403.3	Coinsurance Requirement
3403.4	Coverage
3403.5	Participating Pharmacy

3400 Introduction

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.

3401 Eligibility

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, and meet the categorical eligibility requirements.

The following table presents the eligibility requirements.

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

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

7/1/02

Bulletin No. 02-18

3401

3400 Eligibility

3401.1 Insurance Coverage

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. 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. The department considers individuals covered by VScript, including VScript Expanded, to be uninsured for drugs that are excluded from VScript coverage at 3202, and automatically extends coverage for these drugs under the Healthy Vermonters program.

3401.2 Citizenship

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

The individual is a native-born or naturalized U.S. citizen. For purposes of qualifying as a U.S. citizen, the U.S., 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 U.S. citizens for purposes of Healthy Vermonters.

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.

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 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.

7/1/02

Bulletin No. 02-18

3401.4

3400 Eligibility

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.

3401.5 Financial Need of a Healthy Vermonters Group

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 applicant's 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.

7/1/02

Bulletin No. 02-18

3401.51

3401 Eligibility

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 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 3401.52 (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.

7/1/02

Bulletin No. 02-18

3401.51 P. 2

3401 Eligibility

3401.51 Countable Income

b. Unearned Income (Continued)

- 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:

- Business expenses (self-employment only)
- Standard employment expense deduction
- Dependent care expenses

7/1/02

Bulletin No. 02-18

3401.51 P. 3

3401 Eligibility

3401.51 Countable Income (Continued)

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 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 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.)

7/1/02

Bulletin No. 02-18

3401.51 P. 4

3401 Eligibility

3401.51 Countable Income (Continued)

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.

7/1/02

Bulletin No. 02-18

3401.52

3401 Eligibility

3401.52 Excluded Income

- 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).
- Federal College Work 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 # 4).
- Educational loans under the federal Family Educational Loan Program or the federal Direct Student Loans Program (Stafford or PLUS loans).

7/1/02

Bulletin No. 02-18

3401.52 P. 2

3401 Eligibility

3401.52 Excluded Income (Continued)

- 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.
- 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 food stamp 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.

7/1/02

Bulletin No. 02-18

3401.52 P. 3

3401 Eligibility

3401.52 Excluded Income (Continued)

- 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 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.
- p. Experimental Housing Allowance Program payments made under Annual Contributions Contracts entered into before January 1, 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).
- 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.

7/1/02

Bulletin No. 02-18

3401.52 P. 4

3401 Eligibility

3401.52 Excluded Income (Continued)

- 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).
- bb. 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.
- cc. 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.

7/1/02

Bulletin No. 02-18

3401.52 P.5

3401 Eligibility

3401.52 Excluded Income (Continued)

- dd. 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.
- ee. 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.
- ff. Payments made to a member of the Aroostook Band of Micmacs pursuant to the Aroostook Band of Micmacs Settlement Act.
- gg. 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.
- hh. Bona fide loans.

7/1/02

Bulletin No. 02-18

3401.53

3401 Eligibility

3401.53 Determining Countable Income

Complete the following steps to determine countable income:

- a. Constitute the Healthy Vermonters group according to the definition included in the Financial Need of a Healthy Vermonters Group (3401.5) section.
- 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.

3401.54 Income Test

Individuals are eligible for Healthy Vermonters if they have income no greater than 300 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 Medicare or 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 PATH's income maximum, PATH will issue a second increase on April 1.

7/1/02

Bulletin No. 02-18

3402

3402 Eligibility Process

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

3402.1 Application

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 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 (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.

7/1/02

Bulletin No. 02-18

3402.2

3402 Eligibility Process

3402.2 Application Decision

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 (3401.54) shall be denied and may reapply at any time.

3402.3 Period of Eligibility

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.

3402.4 Termination of Eligibility

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:

- have moved out of state;
- have been admitted to an institution where they are ineligible for further services;
- have voluntarily withdrawn from the program;
- were found to be ineligible on the date coverage began;
- 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
- have died.

7/1/02

Bulletin No. 02-18

3402.5

3402 Eligibility Process

3402.5 Requirement to Report Changes

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:

- 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 Healthy Vermonters individual with an identification card. This identification card may be used only at participating pharmacies as defined at 3403.5.

3402.7 Application for Other Benefits

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.

3402.8 Right to Appeal

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 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 Healthy Vermonters 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.

7/1/02

Bulletin No. 02-18

3402.9

3402 Eligibility Process

3402.9 Beneficiary Fraud Investigation

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 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.

7/1/02

Bulletin No. 02-18

3403

3403 Payment Conditions

3403.1 Program Benefit

Individuals eligible for this program receive assistance in purchasing covered drugs, defined at 3403.4, 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.

3403.2 Enrollment Fee

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.

3403.3 Coinsurance Requirement

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.

3403.4 Coverage

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

7/1/02

Bulletin No. 02-18

3403.5

3403 Payment Conditions

3403.5 Participating Pharmacy

"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:

- 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.