STATE OF VERMONT
AGENCY OF HUMAN SERVICES

DCF

Department for Children and Families

BULLETIN NO.: 13-12F

FROM: Richard Giddings, Deputy Commissioner
Economic Services Division

DATE: September 04, 2013

SUBJECT: Health Benefits, Eligibility and Enrollment

GES ADOPTED EFFECTIVE 10/01/13

INSTRUCTIONS

___ Maintain Manual - See instructions below.
_X_ Proposed Regulation - Retain bulletin and attachments until you receive Manual Maintenance
___ Information or Instructions - Retain until _____

MANUAL REFERENCE(S):

4100	5300	5700
4200	5500	5900
4300	5600	
4400		

This final rule implements the provisions of the federal Affordable Care Act (ACA) and Vermont Act Nos. 48 of 2011 and 171 of 2012. The ACA expands access to health insurance coverage through improvements to the Medicaid and Children's Health Insurance Programs (CHIP)and the establishment of Health-Benefits Exchanges (Exchanges). Vermont's Exchange--Vermont Health Connect (VHC)--will provide a marketplace for individuals and small employers to shop for and purchase private health insurance options. It will also provide Vermonters with the opportunity to apply for and enroll in Vermont's public health-benefits programs.

Specific Changes to Rule Sections

Section	Description of Change
4100	Repeal on 12/31/13 and replace with proposed rule on 1/1/14
4200	Repeal on 12/31/13 and replace with proposed rule on 1/1/14
4300	Repeal on 12/31/14. For new enrollees, becomes effective on 1/01/2013. The proposed rule will become effective for individuals enrolled on or before 12/31/13 as they reach their annual review date throughout 2014.
4400	Repeal on 12/31/13 and replace with proposed rule on 1/1/14.
5300	Repeal on 12/31/13, except: Retain 5321-5323 for VPharm and MVP eligibility.
5500	Remains in place until a point in 2014 when information technology support is available; beneficiaries will then convert to the new rule.
5600	Repeal on 12/31/13
5700	Remains in place until a point in 2014 when information technology support is available; beneficiaries will then convert to the new rule.
5900	Repeal on 12/31/13.

The Legislative Committee on Administrative Rules concurred in the following changes to the final proposed rule:

Section	Description of Change
4.02(g)	Added "(1)The individual has the right to be represented by a legal representative."
6.00 (b) (7)	Removed
8.02 (g)	Removed
28.02(b)(3)	The language "not already included in adjusted gross income" was added
56.04(b)	cross reference corrected to read 56.03(c)

Description of New Rule

This rule codifies policy and procedural changes to the Medicaid and CHIP programs related to eligibility, enrollment, renewals, public availability of program information, and coordination across health-benefits programs to be consistent with the ACA and Vermont legislation. This rule also revises and consolidates Economic Service Division (ESD)'s Medicaid and CHIP program eligibility rules into a single, consistent, and updated code.

Rule Making Process

A. ***Informal Public Input Process***

1. The proposed rule was filed with the Interagency Committee on Administrative Rules (ICAR) on 4/23/2013 and presented at its meeting on 4/29/2013.

2. The proposed rule was filed with the Secretary of State's Office on May 09, 2013.

3. The Secretary of State published notice of rulemaking on their website on 5/15/2013.

4. The department posted the proposed rule on its website http://dcf.vermont.gov/esd/rules and notified advocates, providers, subscribers, and members of the public of the proposed rule.

B. ***Formal Notice and Comment Period***

1. A public hearing was held on 6/14/2013 from 10:00am - 12:00 noon in the Agency of Human Services Secretary's Conference Room, 208 Hurricane Lane, Williston, Vermont.

2. Written comments were submitted up to 4:30 p.m. on 6/21/2013 to Michele Betit, Economic Services Division, DCF; 103 South Main Street, Waterbury, Vermont 05671-1201, michele.betit@state.vt.us. Fax: (802) 476-1654.

3. On or before 7/24/2013 copies of the final proposed rule were filed with the Secretary of State and the Legislative Committee on Administrative Rules (LCAR).

4. The department presented the rule to LCAR at its meeting on 8/08/2013.

5. The department expects to file the final rule no later than 9/12/2013.

6. The rule be effective on October 1, 2013.

Specific Changes and Additions to Policy Pages

The changes and additions in this bulletin are a comprehensive revision and renaming of existing health care programs, and creates new health care categories in order to expand affordable coverage to more individuals and children. Following is the table of contents of the new rule. The adopted rule in its entirety can be viewed at http://dcf.vermont.gov/esd/rules.

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	The Agency of Human Services (AHS) was created in 1969 to serve as the umbrella organization for all human-service activities within state government. It is the Single State Agency for Medicaid purposes and the adopting authority for this rule.

2.00 General Description of Vermont's Health-Benefits Programs (subject to specific criteria in subsequent sections) (10/01/2013, 13-12F)

2.01 Types of health benefits (10/01/2013, 13-12F)

(a) In general	The state offers several types of health benefits, including: • Medicaid; • Children's Health Insurance Program (CHIP); • Enrollment in a Qualified Health Plan (QHP) with advance payments of premium tax credits (APTC); and • Enrollment in a QHP with cost-sharing reductions (CSR). The benefits for which a person is eligible is determined based on the individual's income, resources (in specified cases), and circumstances, such as level of care needs, as covered in succeeding sections.
(b) Benefit choice	Except as may be otherwise restricted, an individual may select the particular benefit or benefits that they wish to be considered for. In the absence of such a selection, AHS will determine an individual's eligibility for the most advantageous benefit that they qualify for.
(c) Redetermination of eligibility	If an individual becomes ineligible for one benefit, AHS will determine eligibility for the next most advantageous benefit that they then qualify for.

2.02 Medicaid (10/01/2013, 13-12F)

(a) Overview of the Medicaid Program	The Medicaid program is authorized in Title XIX of the Social Security Act (the Act).
(b) Medicaid eligibility	Vermont provides Medicaid to those who meet the requirements of one of three eligibility groups:

	• Mandatory categorically needy; • Optional categorically needy; and • Medically needy. To be eligible for federal funds, states are required to provide Medicaid coverage for certain groups of individuals. These groups–the mandatory categorically needy–derive from the historic ties to programs that provided federally-assisted income-maintenance payments (*e.g.*, SSI and Aid to Families with Dependent Children). States are also required to provide Medicaid to related groups not receiving cash payments. States also have the option of providing Medicaid coverage for other "categorically related" groups. These optional groups share characteristics of the mandatory groups (that is, they fall within defined categories), but the eligibility criteria are somewhat more liberally defined. The medically-needy option allows states to extend Medicaid eligibility to additional groups of people. These individuals would be eligible for Medicaid under one of the mandatory or optional groups, except that they do not meet the income or resource standards for those groups. Individuals may qualify immediately or may "spend down" by incurring medical expenses greater than the amount by which their income or resources exceed their state's medically-needy standards.[1] Vermont also operates health-care programs permitted by a research demonstration waiver authorized under § 1115 of the Social Security Act.
(c) Vermont's Medicaid Program[2]	The Vermont Medicaid program covers all mandatory categories of enrollees. It also offers all mandatory services—general hospital inpatient: outpatient hospital and rural health clinics; other laboratory and x-ray; nursing facility, Early Periodic Screening, Diagnosis and Treatment (EPSDT), and family planning services and supplies; physician's services and medical and surgical services of a dentist; home health services; and nurse-midwife and nurse practitioner services. Vermont includes certain, but not all, optional categories of enrollees. Vermont has also elected to cover certain, but not all, optional services for which federal financial participation is available. The scope of coverage for children under the EPSDT provisions of Title XIX is different and more extensive than coverage for adults. The EPSDT provisions of Medicaid law specify that services that are optional for adults are mandatory covered services for all Medicaid-eligible children under age 21 when such services are determined necessary as a result of an EPSDT screen. Specifically, Vermont is required to provide > such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of [1396d] to correct or ameliorate defects and physical and

[1] In Vermont, the Medically Needy Income Level is known as the "Protected Income Level," or "PIL."

[2] Former Medicaid Rule 4100.

	mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State [Medicaid] plan.[1] A further definition of the scope of EPSDT services is found in 42 USC § 1396d(a)(13) which requires states to provide other diagnostic, screening, preventive, and rehabilitative services, including any medical or remedial services (provided in a facility, home, or other setting) recommended by a physician or other licensed professional of the healing arts within the scope of their practice under State Law, for the maximum reduction of physical or mental disability and restoration of an individual to the best functional level. Vermont is authorized to establish reasonable standards, consistent with the objectives of the Medicaid statute, for determining the extent of coverage in the optional categories based on such criteria as medical necessity or utilization control.[3] In establishing such standards for coverage, Vermont ensures that the amount, duration, and scope of coverage are reasonably sufficient to achieve the purpose of the service.
2.03 Children's Health Insurance Program (CHIP) (10/01/2013, 13-12F)	
(a) In general	CHIP (known from its inception until March 2009 as the State Children's Health Insurance Program, or SCHIP) is authorized by Title XXI of the Social Security Act.
(b) Vermont CHIP	Vermont utilizes the CHIP program to provide health coverage to uninsured children with household incomes between 225% and 300% of the federal poverty level (FPL). The CHIP program is part of the coverage array known as "Dr. Dynasaur." All of the provisions in this rule that apply to the "child" Medicaid coverage group (§ 7.03(a)(3)) apply with equal effect to an individual who is enrolled in CHIP.
2.04 The Health Benefits Exchange (10/01/2013, 13-12F)	
(a) In general	Vermont has elected to establish and operate its own Exchange. Vermont Act No. 48 of 2011, "An act relating to a universal and unified health system," established the Vermont health benefit exchange (Vermont Health Connect, VHC). The purpose of VHC is to facilitate the purchase of affordable, qualified health benefit plans by individuals, and small employers in the merged individual and small group markets; and later in the large group market in Vermont in order to reduce the number of uninsured and underinsured; to reduce disruption when individuals lose employer-based insurance; to reduce administrative costs in the insurance market; to contain costs; to promote health, prevention, and healthy lifestyles by individuals; and to improve quality

[3] 42 USC § § 1396a(a)(17).

	of health care. Purchasing employer-sponsored coverage through VHC will also qualify certain small employers to receive a federal small business tax credit. QHPs must provide at least essential health-benefit packages. Such packages must provide a comprehensive set of services, cover at least 60 percent of the actuarial value of the covered benefits, and limit annual cost-sharing to the current law Health Savings Account (HSA) limits. The Patient Protection and Affordable Care Act of 2010 (ACA) defines four benefit categories of plans plus a separate catastrophic plan. The four comprehensive plans each provide essential health benefits and maintain HSA out-of-pocket limits. Coverage percentages of the benefit costs of the plans (with a de minimus variation of plus or minus 2 percent) are as follows: • Bronze plan: 60 percent. • Silver plan: 70 percent. • Gold plan: 80 percent. • Platinum plan: 90 percent. Catastrophic plans are available to individuals up to age 30 or to individuals who are exempt from the federal penalty for not having coverage. These plans provide catastrophic coverage only, with the coverage level set at the HSA current-law levels. Prevention benefits and coverage for three primary-care visits are exempt from the deductible.
(b) Premium Assistance and Cost Sharing Reductions	The ACA also extended new federal health benefits to qualified people who purchase insurance through the Exchange. Eligible individuals may receive advance premium tax credits (APTC). Some also qualify for cost-sharing reductions (CSR). Refundable and advanceable premium tax credits are available to eligible individuals and families with incomes between 133 and 400 percent of the FPL to purchase insurance through the Exchange. The premium credits are tied to the second-lowest-cost silver plan in the area and are set on a sliding scale such that the premium contributions are limited to the following percentages of income for specified income levels: Up to 133 percent FPL: 2 percent. 133-150 percent FPL: 3 – 4 percent. 150-200 percent FPL: 4 – 6.3 percent. 200-250 percent FPL: 6.3 – 8.05 percent. 250-300 percent FPL: 8.05 – 9.5 percent. 300-400 percent FPL: 9.5 percent.

	The premium contributions for those receiving subsidies are increased annually to reflect the excess of the premium growth over the rate of income growth for 2014-2018. Beginning in 2019, there will be further adjustment of the premium contributions to reflect the excess of premium growth over consumer price index (CPI) if aggregate premiums and cost-sharing subsidies exceed 0.54 percent of Gross domestic product (GDP). In addition to premium subsidies, eligible individuals receive CSRs. These subsidies reduce the cost-sharing amounts and annual cost-sharing limits and have the effect of increasing the actuarial value of the basic benefit plan to the following percentages of the full value of the plan for the specified income level: 100-150 percent FPL: 94 percent. 150-200 percent FPL: 87 percent. 200-250 percent FPL: 73 percent. Modified adjusted gross income (MAGI) is used to determine eligibility for APTC and CSR. APTC and CSR are only available to unincarcerated U.S. citizens and legal immigrants who meet the applicable income limits. Employees who are offered coverage by an employer are not eligible for APTC unless the employer's plan does not have an actuarial value of at least 60 percent or if the employee's share of the premium exceeds 9.5 percent of the employee's household income for self-only coverage. Legal immigrants who are barred from enrolling in Medicaid during their first five years in the U.S. are eligible for APTC and CSR. Such immigrants may have income under 100 percent FPL.
(c) Administrative Requirements	Federal health-care regulations contain a number of provisions aimed at the administration of the health-benefits eligibility-determination process. These provisions are intended to promote administratively-efficient, streamlined, and coordinated eligibility business processes.
2.05 Administration of eligibility for health benefits (10/01/2013, 13-12F)	
	(a) AHS administers eligibility for the state's health-benefits programs in accordance with applicable provisions of federal and state law and regulations. (b) The eligibility determination process is administered such that:[4] (1) Individual dignity and self-respect are maintained; (2) The constitutional and other legal rights of individuals are respected; (3) Practices do not violate the individual's privacy or dignity or harass

[4] Derived from ESD All Programs Rule 2000.

	the individual in any way; (4) Disclosure of information concerning applicants or enrollees is limited to purposes directly connected with the administration of the program or otherwise required by law; (5) Each individual who wishes to do so is given an opportunity to apply or reapply for benefits without delay; (6) Prompt action is taken on each application and reapplication and individuals are notified in writing of the decision on the application; (7) Decisions are based on recorded information showing either that all pertinent eligibility requirements are met or that one or more requirements are not met; (8) Benefits are given promptly and continue regularly to all eligible individuals until they are found to be ineligible; (9) Eligibility is redetermined when circumstances change or at the time of renewal, in accordance with the same principles as initial application; (10) Individuals are the primary sources of information about their eligibility; (11) Individuals are informed of their responsibility to furnish complete and accurate information, including prompt notification of changes affecting their eligibility or amount of aid or benefits, and of the penalties for willful misrepresentation to obtain benefits to which they are not entitled; (12) Individuals are helped to obtain needed information; and (13) Verification of conditions of eligibility are limited to what is reasonably necessary to assure that expenditures under the program are legal, in accordance with federal and state law and regulations. (c) Application of these principles in specific areas is covered in succeeding sections.
3.00 Definitions (10/01/2013, 13-12F)	
	As used in this rule, the following terms have the following meanings:
Adjusted monthly premium[5]	The premium an insurer charges for the applicable benchmark plan (ABP) to cover all members of the tax filer's coverage family.
Advance payment of the	Subsidies provided on an advance basis to an issuer on behalf of an eligible

[5] 26 CFR § 1.36B-3(e).

premium tax credit (APTC)[6]	individual enrolled in a QHP to reduce the individual's required premium payment.
Affordable Care Act (ACA)[7]	The Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152), as amended by the Three Percent Withholding Repeal and Job Creation Act (Pub. L. 112-56).
Aid to the Aged, Blind, or Disabled (AABD)[8]	Vermont's supplemental security income (SSI) state supplement program.
Alternate reporter	A person who is authorized to receive either original notifications or copies of such notifications on behalf of an individual. (See, § 5.02(b)(1)(iv)).
Annual open enrollment period (AOEP)[9]	The period each year during which a qualified individual may enroll or change coverage in a QHP.
Applicable benchmark plan (ABP)[10]	As defined in § 60.06, the second-lowest-cost silver plan offered through VHC.
Applicant[11]	An individual or qualified employee seeking eligibility for health benefits for themselves through an application submission.
Application[12]	A single, streamlined application for all health-benefits programs, supplemented with forms to collect additional information needed to determine eligibility on a basis other than the applicable MAGI standard, submitted by or on behalf of an applicant.
Application date	(a) The day the application is received by AHS, if it is received on a business day; or (b) The first business day after the application is received, if it is received on a day other than a business day.

[6] 42 CFR § 435.4; 45 CFR § 155.20 (NPRM, 78 FR § 4593); § 36B of the Code (as added by § 1401 of the ACA).

[7] 26 CFR § 1.36B-1(j); 42 CFR § 435.4; 45 CFR § 155.20.

[8] 33 VSA § 1301 *et seq.*; AABD Rule 2700 *et seq.*

[9] 45 CFR § 155.20.

[10] 26 CFR § 1.36B-3(f).

[11] 42 CFR § 435.4; 45 CFR §§ 155.20 and 156.20.

[12] 42 CFR § 435.4; 45 CFR § 155.410(a).

Application filer[13]	(a) Applicant; (b) Adult who is in the applicant's household; (c) Authorized representative; or (d) If the applicant is a minor or incapacitated, someone acting responsibly for the applicant.
Approve	To determine that an individual is eligible for health benefits.
Approval month	The month in which the individual's eligibility is approved.
Authorized representative	A person or entity designated by an individual to act responsibly in assisting the individual with their application, renewal of eligibility and other ongoing communications. See, § 5.02
Benefit year (or taxable year)[14]	A calendar year for which a health plan provides coverage for health benefits.
Broker[15]	A person or entity licensed by the state as a broker or insurance producer
Business day	Any day during which state offices are open to serve the public.
Cancel	To determine that an applicant who was approved for health benefits but not yet enrolled is no longer eligible for health benefits.
Caretaker relative[16]	(a) A relative of a dependent child (as defined in this § 3.00) by blood, adoption, or marriage, with whom the dependent child is living, who assumes primary responsibility for the dependent child's care (as may, but is not required to, be indicated by claiming the dependent child as a tax dependent for Federal income tax purposes). (b) As used in this definition, a "relative" is the child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece. The term relative includes: (1) An individual connected to the dependent child by blood, including

[13] 42 CFR § 435.907; 45 CFR § 155.20.

[14] 45 CFR §§ 155.20 and 156.20. The Treasury regulations employ the term "taxable year." The Internal Revenue Code defines the "benefit year" as "the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the taxable income is computed under subtitle A. . . ." 26 USC § 7701(a)(23). For most individuals, the benefit year is the calendar year, and thus, synonymous with the Exchange regulation's definition of "benefit year."

[15] 45 CFR § 155.20.

[16] 42 CFR § 435.4; former Medicaid ANFC Rule 4343.

	half-blood; (2) An individual of preceding generations denoted by grand, great, or great-great; and (3) The spouses or civil-union partners of such relatives, even after the marriage or union is terminated by death or dissolution. (4) An adult not related to the dependent child by blood, adoption, or marriage, but who lives with the dependent child and has primary responsibility for the dependent child's care.
Case file	The permanent collection of documents and information required to determine eligibility and to provide benefits to individuals.
Categorically needy[17]	Families and children; aged, blind, or disabled individuals; and pregnant women, described under subparts B and C of 42 CFR part 435 who are eligible for Medicaid. Subpart B describes the mandatory eligibility groups who generally, are receiving or are deemed to be receiving cash assistance under the Act. These mandatory groups are specified in §§ 1902(a)(10)(A)(i),1902(e),1902(f), and 1928 of the Act. Subpart C describes the optional eligibility groups of individuals who, generally, meet the categorical requirements or income or resource requirements that are the same as or less restrictive than those of the cash assistance programs and who are not receiving cash payments. These optional groups are specified in §§ 1902(a)(10)(A)(ii),1902(e), and 1902(f) of the Act.
Catastrophic plan[18]	A health plan available to an individual up to age 30 or to an individual who is exempt from the mandate to purchase coverage that: (a) Meets all applicable requirements for health insurance coverage in the individual market and is offered only in the individual market; (b) Does not provide a bronze, silver, gold, or platinum level of coverage; and (c) Provides coverage of essential health benefits once the annual limitation on cost sharing is reached. Prevention benefits and coverage for three primary-care visits are exempt from the deductible.
Certified application counselors	Staff and volunteers of state-designated organizations who are authorized and registered by AHS to provide assistance to individuals with the application process and during renewal of eligibility. See, § 5.05
Close	To determine that an enrollee is no longer eligible to receive health benefits.
Code	Internal Revenue Code.

[17] 42 CFR § 435.4.

[18] 45 CFR § 156.155

Combined eligibility notice[19]	An eligibility notice that informs an individual, or multiple family members of a household when feasible, of eligibility for each of the government-sponsored health-benefits programs, and enrollment in a QHP, for which a determination or denial was made. A combined notice must meet the requirements of § 68.02.
Community spouse (CS)	The spouse of an institutionalized individual who is not living in a medical institution or a nursing facility. An individual is considered a community spouse even when receiving MABD for long-term care services in a home or community-based setting if they are the spouse of an individual who is also receiving MABD for long-term care services.
Cost of a QHP	See, § 60.02(a)
Cost sharing[20]	Any expenditure required by or on behalf of an individual with respect to essential health benefits; such term includes deductibles, coinsurance, copayments, or similar charges, but excludes premiums, balance-billing amounts for non-network providers, and spending for non-covered services.
Cost-sharing reductions (CSR)[21]	Reductions in cost sharing for an individual who is enrolled in a silver-level QHP or for an individual who is an Indian enrolled in a QHP.
Couple	Two individuals who are married to each other or are in a civil union, according to the lawsof the State of Vermont.
Coverage	
(a) In general	The scope of health benefits provided to an individual.
(b) Nonpremium-based coverage	Any coverage that is provided without a premium charge.
(c) Premium-based coverage	Any coverage that is provided with a premium charge.
Coverage date	The date coverage begins.
Coverage family[22]	See, § 60.02(b)
Coverage group[23]	Category of Medicaid eligibility, defined by particular categorical, financial, and

[19] 42 CFR § 435.4 (NPRM, 78 FR 4593).

[20] 45 CFR §§ 155.20 and 156.20.

[21] 45 CFR §§ 155.20 and 156.20.

[22] 26 CFR § 1.36B-3(b)(1).

[23] 42 CFR § 435.10(b).

	nonfinancial criteria.
Coverage island	A discrete period of coverage that is available in certain defined circumstances.
Coverage month[24]	A month for which, as of the first day of the month: (a) An individual is receiving coverage; (b) If a premium is charged for coverage, the individual's premium is paid in full or, if the individual is enrolled in a QHP with APTC, the individual is in the first month of a premium grace period (see § 64.06(a)(1) for a description of the grace period for an individual enrolled in a QHP with APTC); and (c) If the individual is enrolled in a QHP with APTC, the individual is not eligible for Minimum Essential Coverage (MEC) other than coverage in the individual market, as referenced in § 5000A(f)(1)(C) of the Code.
Date of application	See, application date
Day	A calendar day unless a business day is specified.
Deny	To determine that an applicant is ineligible for a health-benefits program.
Dependent child[25]	An individual who is: (a) Under the age of 18; or (b) Age 18 and a full-time student in secondary school (or equivalent vocational or technical training), if before attaining age 19 the child may reasonably be expected to complete such school or training.
Disability[26]	
(a) Individual age 18 and older	An individual age 18 and older is considered "disabled" if they are unable to engage in any substantial gainful activity because of any medically-determinable physical or mental impairment, or combination of impairments, that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not fewer than 12 months. To meet this definition, an individual must have a severe impairment, which makes them unable to do their previous work or any other substantial gainful activity that exists in the national economy. To determine whether an individual is able to do any other work, AHS considers their residual functional capacity, age, education, and work experience.
(b) Individual under age	An individual under age 18 is considered disabled if they have a medically-determinable physical or mental impairment, or combination of impairments,

[24] 26 CFR § 1.36B-3(c).

[25] 42 CFR § 435.4.

[26] Former Medicaid SSI Rule 4213.

18	resulting in marked and severe functional limitations, that can be expected to result in death or that have lasted or can be expected to last for at least 12 consecutive months. An individual under age 18 who engages in substantial gainful activity may not be considered disabled.
Disenroll	To end coverage.
Dr. Dynasaur	The collection of programs that provide health benefits to children under age 19 in the group defined in § 7.03(a)(3) and pregnant women in the group defined in § 7.03(a)(2).
Electronic account[27]	An electronic file that includes all information collected and generated by the state regarding each individual's health-benefits eligibility and enrollment, including all documentation required under § 4.04 and including information collected or generated as part of a fair hearing process conducted with regard to health-benefits eligibility and enrollment.
Eligible	The status of an individual determined to meet all of a health-benefits program's financial and nonfinancial qualifications.
Eligible employer-sponsored plan[28]	(a) With respect to an employee, a group health plan or group health insurance coverage offered by an employer to the employee which is: (1) A governmental plan (within the meaning of § 2791(d)(8) of the Public Health Service Act); or (2) Any other plan or coverage offered in the small or large group market within a state. (b) This term also includes a grandfathered health plan29 offered in a group market.
Eligibility determination[30]	An approval or denial of eligibility as well as a renewal or termination of eligibility.
Eligibility process	Activities conducted for the purposes of determining, redetermining, and maintaining the eligibility of an individual.
Employer contributions[31]	Any financial contributions toward an employer-sponsored health plan, or other eligible employer-sponsored benefit made by the employer including those made by salary reduction agreement that is excluded from gross income.

[27] 42 CFR §§ 435.4 (NPRM, 78 FR 4593) and 435.914.

[28] 26 CFR § 1.36-2(c)(3)(i); 26 USC § 5000A(f)(2).

[29] 26 USC §§ 5000A(f)(1)(D).

[30] 42 CFR § 435.4. *See also*, 42 CFR §§ 435.911 and 435.916; 45 CFR § 155.302.

[31] 45 CFR § 155.20.

Enroll	To initiate coverage for an approved individual.
Enrollee[32]	An individual who has been approved and is currently receiving health benefits. The term "enrollee" includes the term "beneficiary," which is an individual who has been determined eligible for, and is currently receiving, Medicaid.
Exchange (Vermont Health Connect (VHC))[33]	A state-managed entity through which individuals, qualified employees, and small businesses can compare, shop for, purchase, and enroll in QHPs; individuals can apply for and enroll in government-sponsored health-benefit plans, and apply for and enroll in APTC and CSR. In Vermont, the Exchange is known as Vermont Health Connect (VHC).
Exchange service area[34]	The area in which the Exchange (in Vermont, VHC) is certified to operate.
Family size	See, § 28.02(b)
Federal poverty level (FPL)[35]	The poverty guidelines most recently published in the Federal Register by the Secretary of HHS under the authority of 42 USC § 9902(2), as in effect for the applicable budget period used to determine an individual's income eligibility for means-tested health benefits.
Financial responsibility group	The individuals whose income or resources are considered when determining eligibility for a Medicaid group (defined below). See § 29.03 for rules on the formation of the financial responsibility group.
Grace period	The period of time during which an enrollee who has failed to pay all outstanding premiums remains enrolled in coverage, with or without pended claims.
Grandfathered health plan coverage[36]	Coverage provided by a group health plan, or a group or individual health insurance issuer, in which an individual was enrolled on March 23, 2010 (for as long as it maintains that status under federal criteria).

[32] 42 CFR § 435.4.

[33] 26 CFR § 1.36B-1(k); 45 CFR § 155.20. There will be a single "service area" in Vermont, for both Medicaid and QHP enrollment.

[34] 45 CFR § 155.20.

[35] 26 CFR § 1.36B-1(h); 42 CFR § 435.4; 45 CFR § 155.410. The Treasury regulations uses the term "FPL" to describe this indicator: "FPL. The FPL means the most recently published poverty guidelines (updated periodically in the Federal Register by the Secretary of Health and Human Services under the authority of 42 USC § 9902(2)) as of the first day of the regular enrollment period for coverage by a QHP offered through an Exchange for a calendar year. Thus, the FPL for computing the premium tax credit for a benefit year is the FPL in effect on the first day of the initial or annual open enrollment period preceding that benefit year. See 45 CFR 155.410." 26 CFR § 1.36B-1(h). For the sake of consistency, AHS has adopted HHS's term for this concept, and uses it throughout this rule.

[36] 45 CFR § 155.20; 45 CFR § 147.140.

Group health plan[37]	An employee welfare benefit plan to the extent that the plan provides medical care (including items and services paid for as medical care) to employees (including both current and former employees) or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise.
Health-benefits program[38]	A program or system that is one of the following: (a) A state Medicaid program under Title XIX of the Act. (b) A state children's health insurance program (CHIP) under Title XXI of the Act. (c) A system that facilitates the purchase by qualified individuals of health insurance coverage in QHPs. (d) A program that makes available coverage in QHPs with APTC to qualified individuals. (e) A program that makes available coverage in QHPs with CSR.
Health benefits	Any health-related program or benefit, administered or regulated by the state, including, but not limited to QHPs, APTC, CSR, and Medicaid.
Health insurance coverage[39]	Benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or HMO contract offered by a health insurance issuer. Health insurance coverage includes group health insurance coverage and individual health insurance coverage.
Health insurance issuer or issuer[40]	An insurance company, insurance service, or insurance organization (including an HMO) that is required to be licensed to engage in the business of insurance in a state and that is subject to state law that regulates insurance (within the meaning of section 514(b)(2) of ERISA).
Health plan[41]	This term has the meaning given in § 1301(b)(1) of the ACA. That section incorporates the definition found in § 2791(a) of the Public Health Service Act.
Hospice services	Long-term care services provided to an individual who:

[37] 45 CFR §§ 155.20 and 156.20; 45 CFR § 144.103; 45 CFR § 146.145(a).

[38] This term includes the programs and benefits referred to as "insurance affordability programs" in federal regulations. *See,* 42 CFR § 435.4; 45 CFR § 155.300.

[39] 45 CFR § 155.20; 45 CFR § 144.103.

[40] 45 CFR §§ 155.20 and 156.20; 45 CFR § 144.103; 18 VSA § 9402(8).

[41] 45 CFR § 155.20.

	(a) Is terminally ill; (b) Would be eligible for MABD for long-term care services if they lived in an institution; and (c) Needs additional interdisciplinary medical care and support services to enable them and their families to maintain personal involvement and quality of life in their choice of care setting and site of death.
Human Services Board	AHS's fair hearings entity for eligibility issues. See, § 80.01
Individual	An applicant or enrollee for health benefits (including a person receiving health benefits under a § 1115 demonstration waiver (e.g., Global Commitment)).
Initial open enrollment period (IOEP)[42]	The period during which a qualified individual may enroll in a QHP for coverage during the 2014 benefit year.
Institution[43]	An establishment that furnishes (in single or multiple facilities) food, shelter, and some treatment or services to four or more individuals unrelated to the proprietor.
Institutionalized individual	A person requesting MABD for long-term care services, whether the care is received in the community or in an institution licensed by AHS.
Institutionalized spouse (IS)	An institutionalized individual whose spouse qualifies as a community spouse.
Interpreter	A person who orally translates for an individual who has limited English proficiency or an impairment.
Lawfully present	See, § 17.01(g)
Level of coverage[44]	One of four standardized actuarial values (with a de minimus variation of plus or minus 2 percent), as follows: • Bronze plan: 60 percent. • Silver plan: 70 percent. • Gold plan: 80 percent. • Platinum plan: 90 percent.

[42] 45 CFR § 155.20.

[43] 42 CFR § 435.1010. This is the definition referred to in 42 CFR § 435.403(b) and 45 CFR § 155.305(a)(3). "Assisted living" is considered a community setting and not a medical institution or nursing facility because assisted living does not include 24-hour care, has privacy, a lockable door, and is a homelike setting. Former PP&D to Former Medicaid Rule 4201.

[44] 45 CFR § 156.20; § 1302(d)(2) of the ACA.

Limited English proficiency	An ineffective ability to communicate in the English language for individuals who do not speak English as their primary language and may be entitled to language assistance with respect to a particular type of service, benefit or encounter.
Long-term care	Highest-need and high-need care, as determined by AHS, received by individuals living in nursing facilities, rehabilitation centers, intermediate-care facilities for the developmentally disabled (ICF-DD), and other medical facilities for more than 30 consecutive days. It also includes care received in a home or community-based setting pursuant to a waiver.
Long-term care services[45]	Services of long-term care, including nursing facility services; a level of care in any institution equivalent to nursing facility services; services furnished in a home or community-based setting under a waiver or state plan under §§ 1915 or 1115 of the Act; home health services[46] and personal care services.[47]
MAGI-based income[48]	See, § 28.03(c)
Medicaid for Children and Adults (MCA)	The health-benefits program available to a member of a Medicaid coverage group for children, pregnant women, or adults under 65 years of age.
Medicaid for the Aged, Blind, and Disabled (MABD)	The health-benefits program available to a member of a Medicaid coverage group for people who are aged, blind, or disabled. MABD is based on the requirements for two financial assistance programs federally administered by the Social Security Administration: the supplemental security income program (SSI) and aid to the aged, blind, and disabled program (AABD).
Medicaid group	Individuals who are considered in the financial-eligibility determination for MABD. The countable income and resources of the financial responsibility group are compared against the income and resource standards applicable to the Medicaid group's size. See § 29.04 for rules on the formation of the Medicaid group.
Medicaid services[49]	Medical benefits funded through Medicaid. They include Medicaid services (Medicaid Covered Services Rules 7201 – 7508.7), long-term care (Medicaid Covered Services Rules 7601 – 7608), services defined in regulations for Choices for Care, Developmental Disabilities, and the waiver for Traumatic Brain Injury supports, incorporated into the Global Commitment Waiver.
Medical incapacity	See, § 64.09.

[45] 42 CFR § 435.603(j)(4) (NPRM, 78 FR 4593).

[46] § 1905(a)(7) of the Social Security Act.

[47] § 1905(a)(24) of the Social Security Act.

[48] 42 CFR §§ 435.4 and 435.603(e).

[49] *See,* Medicaid Covered Services Rules 7201-7508.7 (Medicaid services) and 7601-7608 (long-term care services).

Medically needy[50]	Families; children; individuals who are aged, blind, or disabled; and pregnant women who are not categorically needy but who may be eligible for Medicaid because their income and, for individuals who are aged, blind or disabled, their resources are within limits set by the state under its Medicaid plan (including persons whose income and, if applicable, resources fall within these limits after their incurred expenses for medical or remedial care are deducted).
Minimum essential coverage (MEC)[51]	Health coverage under government-sponsored programs, employer-sponsored plans that meet specific criteria, grandfathered health plans, individual health plans, and certain other health-benefits coverage. See, § 23.00.
Minimum value[52]	When used to describe coverage in an eligible employer-sponsored plan, minimum value means that the employer-sponsored plan's share of the total allowed costs of benefits provided to the employee under the plan (as determined under guidance issued by the Secretary of HHS under section 1302(d)(2) of the ACA) is at least 60 percent.
Modified adjusted gross income (MAGI)	See, § 28.00
Navigator[53]	An entity or individual selected by AHS and awarded a grant to provide assistance to individuals and employers with enrollment in Medicaid programs and qualified health plans, and to engage in the activities and meet the standards described in § 5.03.
Non-applicant[54]	A person who is not seeking an eligibility determination for himself or herself and is included in an applicant's or enrollee's household to determine eligibility for such applicant or enrollee.
Nonpayment	Failure to pay any or all of a premium due.
OASDI[55]	Old age, survivors, and disability insurance under Title II of the Act.
Optional state supplement[56]	A cash payment made by a state, under § 1616 of the Act, to an aged, blind, or disabled individual. *See*, AABD.
Patient share	See, § 24.00.

[50] 42 CFR § 435.4.

[51] 42 CFR § 435.4; 45 CFR § 155.20.

[52] 45 CFR § 155.300 (NPRM, 78 FR 4593); 26 CFR § 1.36B-2(c)(3)(vi).

[53] 45 CFR § 155.20; 33 VSA § 1807.

[54] 42 CFR § 435.4.

[55] 42 CFR § 435.4.

[56] 42 CFR § 435.4.

Physician's certificate	See, § 64.09.
Plan year[57]	A consecutive 12-month period during which a health plan provides coverage. For plan years beginning on January 1, 2015, a plan year must be a calendar year.
Plain language[58]	Language that the intended audience, including individuals with limited English proficiency, can readily understand and use because that language is concise, well-organized, and follows other best practices of plain language writing.
Pregnant woman[59]	A woman during pregnancy and the post partum period, which begins on the date the pregnancy ends, extends 60 days, and then ends on the last day of the month in which the 60-day period ends.
Premium	
(a) In general	A monthly charge that must be paid by an individual as a condition of initial and ongoing health-benefits eligibility and enrollment.
(b) Initial premium	The premium for the first month of coverage.
(c) Ongoing premium	The premium for successive months of coverage, which are billed and due on a monthly basis.
Premium-assistance amount[60]	See, § 60.04
Premium due date	The day on which a health-benefits premium is due.
Private facility[61]	Any home privately owned and operated, or any home or institution supported by private or charitable funds, over which neither the state nor any of its subdivisions has supervision or control even though individuals may be boarded or cared for therein at public expense. Vermont private institutions include boarding homes, fraternal homes, religious homes, community care homes, residential care facilities, medical facilities (i.e. general hospitals) and nursing facilities licensed by the State of Vermont.
Protected Income Level (PIL)	The income standard for the medically-needy Medicaid coverage groups.
Public Institution[62]	Any institution meeting all of the following conditions:

[57] 45 CFR §§ 155.20 and 156.20.

[58] 45 CFR § 155.20. Incorporates meaning of this term given in § 1311(e)(3)(B) of the ACA.

[59] 42 CFR 435.4.

[60] 26 CFR § 1.36B-3(d).

[61] Former Medicaid rules 4218.2 and 4332.2.

	(d) The institution is owned, maintained, or operated in whole or in part by public funds; (e) Control is exercised, in whole or in part, by any public agency or an official or employee of that agency; and (f) The institution furnishes shelter and care and can be termed a public institution by reason of its origin, charter, ownership, maintenance or supervision.
Qualified Health Plan (QHP)	A health plan that has in effect a certification issued or recognized by Vermont's Department of Financial Regulation (DFR)that it meets the ACA standards described in subpart C of 45 CFR part 156 in accordance with the process described in subpart K of 45 CFR part 155.[63]
QHP issuer[64]	A health insurance issuer that offers a QHP in accordance with a certification from DFR.
Qualified individual[65]	An individual who has been determined eligible by AHS to enroll in a QHP.
Qualifying coverage in an employer-sponsored plan[66]	Coverage in an eligible employer-sponsored plan that meets the affordability and minimum-value standards specified in 26 CFR § 1.36B-2(c)(3), and described in § § 23.02 (affordable) and 23.03 (minimum value).
Quality control (QC)	A system of continuing review to measure the accuracy of eligibility decisions. Also, the name of the AHS unit that is responsible for administering quality-control functions.
Reasonable compatibility	See, § 57.00(a)
Reenroll	To restore coverage after closure.
Reinstate	To restore eligibility after cancellation or closure.
Renew	To redetermine eligibility at a specified periodic interval (*e.g.*, annual renewal of eligibility).

[62] Former Medicaid rules 4218.1 and 4332.1.

[63] 45 CFR §§ 155.20 and 156.20. 26 CFR § 1.36B-1(c) defines the term as follows: "*QHP.* The term QHP has the same meaning as in section 1301(a) of the ACA (42 USC § 18021(a)) but does not include a catastrophic plan described in section 1302(e) of the ACA (42 USC § 18022(e)."

[64] 45 CFR §§ 155.20 and 156.20.

[65] 45 CFR §§ 155.20 and 156.20.

[66] 45 CFR § 155.300n (NPRM, 78FR 4593).

Secure electronic interface[67]	An interface that allows for the exchange of data between information technology systems and adheres to the requirements in subpart C of 42 CFR part 433.
Self-only coverage[68]	Health insurance that covers one individual.
Special enrollment period (SEP)[69]	A period during which a qualified individual or enrollee who experiences certain qualifying events may enroll in, or change enrollment in, a QHP outside of the IOEP and AOEPs.
SSI	Supplemental security income program under Title XVI of the Act.
Substantial gainful activity	(a) Work activity that is both substantial and gainful, defined as follows: (1) Substantial work activity involves doing significant physical or mental activities. Work may be substantial even if it is done on a part-time basis or if individuals do less, get paid less or have less responsibility than when they worked before. (2) Gainful work activity is the kind of work done for pay or profit whether or not a profit is realized. (b) Individuals who are working with disabilities shall be exempt from the substantial gainful activity (SGA) step of the sequential evaluation of the disability determination if they otherwise meet the requirements set forth in § 8.05 for the categorically needy working disabled.
Tax filer[70]	An individual, or a married couple, who indicates that they expect: (a) To file an income tax return for the benefit year; (b) If married (within the meaning of 26 CFR § 1.7703-1), to file a joint tax return for the benefit year; (c) That no other taxpayer will be able to claim them as a tax dependent for the benefit year; and (d) To claim a personal exemption deduction under § 151 of the Code on their tax return for one or more applicants, who may or may not include them or their spouse.
Tax dependent	(a) For purposes of MAGI-based Medicaid eligibility, see § 28.03(a).

[67] 42 CFR § 435.4.

[68] 26 CFR § 1.36B-1(o).

[69] 45 CFR § 155.20.

[70] 45 CFR § 155.300.

	(b) For purposes of APTC/CSR eligibility, see, § 28.05(a).
Third party	Any person, entity, or program that is or may be responsible to pay all or part of the expenditures for another person's medical benefits.
Waiver services	Specialized medical services approved under an exception to standard Medicaid rules for a specific population.

4.00 General program rules (10/01/2013, 13-12F)

4.01 Receiving health benefits from another state (10/01/2013, 13-12F)

	An individual who is receiving health benefits from another state is not eligible for health benefits in Vermont.

4.02 Rights of individuals with respect to application for and receipt of health benefits through AHS (10/01/2013, 13-12F)

(a) Notice of rights and responsibilities	Policies are administered in accordance with federal and state law. Individuals will be informed of their rights and responsibilities with respect to application for and receipt of health benefits.
(b) Right to nondiscrimination and equal treatment	AHS does not discriminate on the basis of race, color, sex, sexual orientation, religion, national origin, disability, or age in admission or access to, or treatment or employment in, its programs or activities.
(c) Right to confidentiality	The confidentiality of information obtained during the eligibility process is protected in accordance with federal and state laws and regulations. The use and disclosure of information concerning applicants, enrollees, and legally-liable third parties is restricted to purposes directly connected with the administration of programs, or as otherwise required by law.
(d) Right to timely provision of benefits	Eligible individuals have the right to the timely provision of benefits, as defined in § 61.00.
(e) Right to information	Individuals who inquire have the right to receive information about health benefits, coverage-type requirements, and their rights and responsibilities as enrollees of health-benefits programs.
(f) Right to apply	Any person, individually or through an authorized representative, has the right, and will be afforded the opportunity without delay, to apply for benefits.
(g) Right to be assisted by others	(1) The individual has the right to be represented by a legal representative. (2) The individual has the right to be accompanied and represented by an authorized representative during the eligibility or appeal processes.

	(3) Upon request by the individual, copies of all eligibility notices and all documents related to the eligibility or appeal process will be provided to the individual's authorized representative. (4) An authorized representative may file an application for health benefits or an appeal on behalf of a deceased person. (5)
(h) Right to inspect the case file	An individual has the right to inspect information in their case file and contest the accuracy of the information.
(i) Right to appeal	An individual has the right to appeal, as provided in § 68.00.
(j) Right to interpreter services	Individuals will be informed of the availability of interpreter services. Unless the individual chooses to provide their own interpreter services, AHS will provide either telephonic or other interpreter services whenever: (1) The individual who is seeking assistance has limited English proficiency or sensory impairment (for example, a seeing or hearing disability) and requests interpreter services; or (2) AHS determines that such services are necessary.
4.03 Responsibilities of individuals with respect to application for and receipt of health benefits through AHS (10/01/2013, 13-12F)	
(a) Responsibility to cooperate	An individual must cooperate in providing information necessary to establish and maintain their eligibility, and must comply with all rules and regulations, including recovery and obtaining or maintaining available health insurance.
(b) Responsibility to report changes[71]	(1) An individual must report changes that may affect eligibility. Such changes include, but are not limited to, income, the availability of health insurance, and third-party liability. (2) A Medicaid enrollee must report such changes within 10 days of learning of the change. (3) Except as specified in paragraphs (b)(4) and (5) of this subsection, a QHP enrollee must report such changes within 30 days of such change. (4) A QHP enrollee who did not request an eligibility determination for APTC or CSR, and is not receiving APTC or CSR, need not report changes that affect eligibility for government-sponsored health-benefits programs. (5) An individual, or an application filer on behalf of the individual, will be allowed to report changes via the channels available for the

[71] Derived from former Medicaid Rule 4140.

	submission of an application, as described in § 52.02.
(c) Cooperation with quality control	An individual enrolled in a health-benefits program must cooperate with any quality-control (QC) review of their case. (§ 4.05)
4.04 Case records (10/01/2013, 13-12F)	
(a) Contents	Case records include the following information: (1) Applications for benefits; (2) Factual data that supports eligibility findings, including, but not limited to: (i) Documentation of verification of information submitted and any supplementary investigation of eligibility factors; (ii) Budgetary computations; (iii) Eligibility decisions; and (iv) Payment authorizations. (3) Copies of all correspondence with and concerning individuals, including, but not limited to, notices of case decisions.
(b) Use of case information	Case information may contribute in statistical or other general terms to material needed for planning, research, and overall administration of human-services programs. Individual case information shall, however, be held in accordance with the confidentiality requirements set forth in § 4.08.
(c) Retention[72]	Case records are retained as required by federal and state requirements for audit and/or review.
4.05 Quality-control review[73] (10/01/2013, 13-12F)	
	(a) AHS's Quality Control (QC) Unit periodically conducts independent reviews of eligibility factors in a sampling of cases. These reviews help to ensure that program rules are clear and consistently applied and that individuals understand program requirements and give correct information in support of their applications for benefits. (b) A random sample of active Medicaid enrollees is chosen each month for a full field review of their eligibility. Each eligibility factor must be verified with the enrollee and with collateral sources. (c) A similar sample of negative actions (e.g., denials, closures, benefit

[72] From former All-Programs Rule 2013.

[73] From former Medicaid Rule 4104.

	decreases) is also chosen each month. These reviews do not usually require a contact with the individual, although the reviewer may sometimes need to check facts with the individual. (d) When a case is selected for review. the individual must cooperate with the QC representative. Cooperation includes, but is not limited to, participation in a personal interview and the furnishing of requested information. If the individual does not cooperate, eligibility for the individual's household may be closed and the individual members may be disenrolled. (e) When there is a discrepancy between the eligibility facts, as discovered during a QC review, and those contained within the case record, AHS will schedule an eligibility review and take action to correct errors or review the effect of the changes.
4.06 Fraud (10/01/2013, 13-12F)	
(a) Fraud	A person commits fraud in Vermont if he or she: (1) "[K]nowingly fails, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose a material fact used in making a determination as to the qualifications of that person to receive aid or benefits under a state or federally funded assistance program, or who knowingly fails to disclose a change in circumstances in order to obtain or continue to receive under a program aid or benefits to which he or she is not entitled or in an amount larger than that to which he or she is entitled, or who knowingly aids and abets another person in the commission of any such act . . . ;"[74] or (2) "[K]nowingly uses, transfers, acquires, traffics, alters, forges, or possesses, or who knowingly attempts to use, transfer, acquire, traffic, alter, forge, or possess, or who knowingly aids and abets another person in the use, transfer, acquisition, traffic, alteration, forgery, or possession of a . . . certificate of eligibility for medical services, or Medicaid identification card in a manner not authorized by law . . . ."[75]
(b) Legal consequences	An individual who commits fraud may be prosecuted under Vermont law. If convicted, the individual may be fined or imprisoned or both. Action may also be taken to recover the value of benefits paid in error due to fraud.
(c) AHS's responsibilities	When AHS suspects that fraud may have been committed, it will investigate the case. If appropriate, the case will be referred to the State's Attorney or Attorney General for a decision on whether or not to prosecute.
(d) Suspected fraud	The following criteria will be used to evaluate cases of suspected fraud to

[74] 33 VSA 141(a)

[75] 33 VSA 141(b)

	determine whether they should be referred to a law enforcement agency: (1) Does the act committed appear to be a deliberately fraudulent one? (2) Was the omission or incorrect representation an error or result of the individual's misunderstanding of eligibility requirements or the responsibility to provide information? (3) Did the act result from AHS omission, neglect, or error in securing or recording information? (4) Did the individual receive prior warning from a state employee that the same or similar conduct was improper?
(e) Examples	(1) The following are examples of instances in which fraud might be suspected and referral considered: (i) The individual accepts and continues paid employment without reporting such employment after having been clearly informed of the necessity of such notification. (ii) The individual fails to acknowledge or report income from pensions, Social Security, or relatives when it is reasonably clear that there was a willful attempt to conceal such income. (iii) The individual disposes of property (either real or personal) and attempts to conceal such disposal. (iv) The individual misrepresents a material fact, such as residency status or dependent relationship or status, in order to receive benefits to which they would not otherwise be eligible. (2) These examples are intended as a guideline; each case will be evaluated individually.
(f) Methods of investigation	Any investigation of a case of suspected fraud is pursued with the same regard for confidentiality and protection of the legal and other rights of the individual as with a determination of eligibility.
(g) Review and documentation of investigation	Procedures will be established for review and documentation of a fraud investigation.
(h) Referral to Law Enforcement Agencies	The final decision regarding referral to a law enforcement agency shall be the responsibility of the DCF Commissioner.
4.07 [Reserved] (10/01/2013, 13-12F)	

4.08 Privacy and security of personally identifiable information[76] (10/01/2013, 13-12F)	
	When personally-identifiable information is collected or created for the purposes of determining eligibility for enrollment in a QHP, determining eligibility for other health-benefit programs, or determining eligibility for exemptions from the individual responsibility provisions in § 5000A of the Code, such information will be used or disclosed only to the extent such information is necessary to administer health care program functions in accordance with federal and state laws.
4.09 Use of standards and protocols for electronic transactions (10/01/2013, 13-12F)	
(a) HIPAA administrative simplification[77]	To the extent that electronic transactions are performed with a covered entity, standards, implementation specifications, operating rules, and code sets adopted by the Secretary of HHS in 45 CFR parts 160 and 162 will be used.
(b) HIT enrollment standards and protocols[78]	Interoperable and secure standards and protocols developed by the Secretary of HHS in accordance with § 3021 of the PHS Act will be incorporated. Such standards and protocols will be incorporated within VHC information technology systems.
5.00 Eligibility and enrollment assistance (10/01/2013, 13-12F)	
5.01 Assistance offered through AHS (10/01/2013, 13-12F)	
(a) In general[79]	Eligibility and enrollment assistance that meets the accessibility standards in paragraph (c) of this subsection is provided, and referrals are made to assistance programs in the state when available and appropriate. These functions include assistance provided directly to any individual seeking help with the application or renewal process.

[76] See generally, Social Security Act §§ 1137 and 1902(a)(7); 26 USC § § 6103; § 1413(c)(1) and (c)(2) of the ACA; 42 CFR Part 431, Subpart F; 45 CFR § 155.260.

[77] 45 CFR § 155.270(a).

[78] 45 CFR § 270(b).

[79] 42 CFR § 435.908; 45 C.F R § 155.205(d). Note: While the consumer-assistance responsibilities of Medicaid agencies and Exchanges may be distinct, "[s]ome aspects of [the Medicaid agency's] applicant and beneficiary assistance may be integrated with the consumer assistance tools and programs of the Exchange." See, CMS "Summary of Proposed Provisions and Analysis of and Responses to Public Comments," 77 Fed. Reg. 17144, 17166 (Mar. 23, 2011). Vermont has opted to operate one health-benefits assistance call center, serving the needs of all applicants and beneficiaries of health-care benefits.

(b) Assistance tools	
(1) Call center[80]	A toll-free call center is provided to address the needs of individuals requesting assistance and meets the accessibility requirements outlined in paragraph (c) of this subsection.
(2) Internet website[81]	An up-to-date internet website that meets the requirements outlined in paragraph (c) of this subsection is maintained. The website: (i) Supports applicant and enrollee activities, including accessing information on the health-benefit programs available in the state, applying for and renewing coverage and providing assistance to individuals seeking help with the application or renewal process; (ii) Provides standardized comparative information on each available QHP, including at a minimum: (A) Premium and cost-sharing information; (B) The summary of benefits and coverage established under § 2715 of the PHS Act; (C) Identification of whether the QHP is a bronze, silver, gold, or platinum level plan as defined by § 1302(d) of the ACA, or a catastrophic plan as defined by § 1302(e) of the ACA; (D) The results of the enrollee satisfaction survey, as described in §1311(c)(4) of the ACA; (E) Beginning 2015, quality ratings assigned in accordance with §1311(c)(3) of the ACA; (F) Medical loss ratio information as reported to HHS in accordance with 45 CFR part 158; (G) Transparency of coverage measures reported to VHC during certification; and (H) The provider directory made available to VHC. (iii) Publishes the following financial information: (A) The average costs of licensing required by VHC; (B) Any regulatory fees required by VHC; (C) Any payments required by VHC in addition to fees under

[80] 42 CFR § 435.908; 45 C.F R § 155.205(a).

[81] Social Security Act § 1943 (42 USC § 1396w-3); 42 CFR § 435.1200(f); 45 CFR § 155.205(b).

	paragraphs (b)(2)(iii)(A) and (B) of this subsection; (D) Administrative costs of VHC ; and (E) Monies lost to waste, fraud, and abuse. (iv) Provides individuals with information about Navigators as described in § 5.03 and other consumer assistance services, including the toll-free telephone number of the call center required in paragraph (b)(1) of this subsection. (v) Allows for an eligibility determination to be made in accordance with § 58.00. (vi) Allows a qualified individual to select a QHP in accordance with § 71.00. (vii) Makes available by electronic means a calculator to facilitate the comparison of available QHPs after the application of any APTC and any CSR.
(c) Accessibility[82]	(1) Information is provided in plain language and in a manner that is accessible and timely. (2) Individuals living with disabilities will be provided with, among other things, accessible websites and auxiliary aids and services at no cost to the individual, in accordance with the Americans with Disabilities Act and § 504 of the Rehabilitation Act. (3) For individuals with limited English proficiency, language services will be provided at no cost to the individual, including: (i) Oral interpretation; (ii) Written translations; and (iii) Taglines in non-English languages indicating the availability of language services. (4) Individuals will be informed of the availability of the services described in this paragraph and how they may access such services.
(d) Availability of program information[83]	(1) The following information is furnished in electronic and paper formats, and orally as appropriate, to all individuals who request it: (i) The eligibility requirements;

[82] 42 CFR § 435.905(b); 45 CFR § 155.205(c).

[83] 42 CFR § 435.905; 45 CFR § 155.205.

	(ii) Available health benefits and services; and (iii) The rights and responsibilities of individuals. (2) Bulletins or pamphlets that explain the rules governing eligibility and appeals in simple and understandable terms will be published in quantity and made available. (3) Such information is provided in a manner that meets the standards in paragraph (c) of this subsection.
(e) Outreach and education [84]	Outreach and education activities that meet the standards in paragraph (c) of this subsection to educate consumers about VHC and Vermont's health-benefits programs to encourage participation will be conducted.
(f) Americans with Disabilities Act (ADA) [85]	As required by the Americans with Disabilities Act, reasonable accommodations and modifications will be made to policies, practices, or procedures when necessary, as determined by the appropriate commissioners or their designees, to provide equal access to programs, services and activities, or when necessary to avoid discrimination on the basis of disability. An individual may appeal the commissioner's determination regarding necessity to the appropriate fair hearings entity or appeals entity in accordance with departmental regulations governing appeals and fair hearings.
5.02 Authorized representatives[86] (10/01/2013, 13-12F)	
(a) In general	(1) An individual may designate another person or organization to act responsibly on their behalf in assisting with the individual's application and renewal of eligibility and other ongoing communications with AHS. These include: (i) Guardians and people with powers of attorney (§ 5.02(i)); and (ii) Any other person of the individual's choice. (2) An individual may grant an authorized representative any or all of the authorities described in paragraph (b) of this subsection. (3) Except as provided in paragraph (h) of this subsection, designation of an authorized representative must be in writing, including the individual's signature, or through another legally binding format subject to applicable authentication and data security standards. (4) Designation will be permitted at the time of application and at other times.

[84] Social Security Act § 1943 (42 USC § 1396w-3); 45 CFR § 155.205(e).

[85] All Programs Rule 2030.

[86] 42 CFR §§ 435.908(b) and 435.923 (NPRM, 78 FR 4694); 45 CFR § 155.227 (NPRM, 78 FR 4593).

	(5) Legal documentation of authority to act on behalf of an individual under state law, such as a court order establishing legal guardianship or a power of attorney, shall serve in the place of written authorization by the individual.
(b) Scope of authority	(1) Representatives may be authorized to do any or all of the following: (i) Assist the individual in completing and submitting any health-benefits application, verification, or other documentation; (ii) Give and receive information regarding the individual's application or enrollment; (iii) Sign an application on the individual's behalf; (iv) Receive copies of the individual's notices and other communications. A person who receives authority to only receive copies of communications is referred to as an "alternate reporter"; (v) Request a fair hearing or file a grievance; and (vi) Act on behalf of the individual in any other matters. (2) The kinds of information that may be shared may include the following: (i) Information or proofs needed to complete the application or redetermination of eligibility; (ii) The status of the application including the program or programs the household members are enrolled in and the effective dates of enrollment; (iii) The reason the individual or household is not eligible for a benefit, if the application is denied or benefits end; and (iv) The effective date of redetermination and any outstanding information or verifications needed to complete a redetermination.
(c) Duration of authorization	(1) The power to act as an authorized representative is valid until: (i) The individual modifies the authorization or notifies AHS, using one of the methods available for the submission of an application, as described in § 52.02(b)(2), that the representative is no longer authorized to act on their behalf; (ii) The authorized representative informs AHS that they no longer are acting in such capacity; or (iii) There is a change in the legal authority upon which the individual or

	organization's authority was based. (2) Any notice described in (1) above, except as stated in (1)(i), must be in writing and should include the individual's or authorized representative's signature as appropriate.
(d) Duties of the authorized representative	The authorized representative: (1) Is responsible for fulfilling all responsibilities encompassed within the scope of the authorized representation, as described in paragraph (b) of this subsection, to the same extent as the individual they represent; and (2) Must agree to maintain, or be legally bound to maintain, the confidentiality of any information regarding the individual provided.
(e) Condition of representation	When an organization is designated as an authorized representative, as a condition of serving, staff members or volunteers of that organization must sign an agreement that they will adhere to the regulations in § 4.08 (relating to confidentiality of information), federal regulations relating to the prohibition against reassignment of provider claims as appropriate for a health facility or an organization acting on the facility's behalf, as well as other relevant state and federal laws concerning conflicts of interest and confidentiality of information.
(f) Form of authorization	For purposes of this subsection, electronic, including telephonically recorded, signatures and handwritten signatures transmitted by facsimile or other electronic transmission will be accepted. Designations of authorized representatives will be accepted through all of the modalities described in § 52.02(b).
(g) Disclosures	The authorization form or the call center representative (if the authorization is made over the telephone) shall advise that: (1) The individual need not give permission to share information. (2) If the individual decides not to give permission, that will not affect eligibility for, or enrollment in, benefits; (3) If the individual does not give permission, the information will not be released unless the law otherwise allows it; (4) AHS is not responsible for what an unrelated authorized representative does with the individual's information after it is shared pursuant to a valid authorization; (5) The individual may change or stop this authorization at any time by notifying AHS by telephone or in writing. However, doing so will not affect previously shared information; (6) If the individual does not change or stop the authorization, it will remain in effect as long as the individual (or household) continues to receive health-care benefits; and

	(7) The individual will be provided with a copy of the authorization upon request.
(h) Minors and incapacitated adults[87]	If the individual is a minor or an incapacitated adult, no authorization is required; someone acting responsibly for the individual may assist in the application process or during a redetermination of eligibility. Such person may also sign the initial application on the applicant's behalf.
(i) Judicially-appointed legal guardian or representative[88]	Upon presentment of a valid document of appointment, a judicially-appointed legal guardian or representative may act on an individual's behalf.
5.03 Navigator program (10/01/2013, 13-12F)	
(a) General requirements[89]	AHS conducts a Navigator program consistent with this subsection through which it awards grants to eligible individuals and entities to perform the functions of navigator organizations, and certifies individuals as Navigators. The functions of navigator organizations include providing assistance to individuals and employers with enrollment in Medicaid programs and qualified health plans,
(b) Standards[90]	AHS maintains and publicly disseminates: (1) A set of standards, to be met by all entities and individuals to be awarded Navigator grants, designed to prevent, minimize, and mitigate any conflicts of interest, financial or otherwise, that may exist for an entity or individuals to be awarded a Navigator grant, and to ensure that all entities and individuals carrying out Navigator functions have appropriate integrity; and (2) A set of training standards, to be met by all entities and individuals carrying out Navigator functions under the terms of a Navigator grant, to ensure expertise in: (i) The needs of underserved and vulnerable populations; (ii) Eligibility and enrollment rules and procedures; (iii) Benefits rules and regulations governing all health-benefits programs offered in the state; (iv) The range of QHP options and health-benefits programs; and

[87] 42 CFR § 435.907(a); 45 CFR § 155.20.

[88] From All Programs Rule 2013.

[89] 45 CFR § 155.210(a); 33 VSA § 1807.

[90] 45 CFR §§ 155.205(d) and 155.210(b).

	(v) The privacy and security standards applicable under § 4.08.
(c) Entities and individuals eligible to be a Navigator[91]	To receive a Navigator grant, an entity must: (1) Be capable of carrying out at least those duties described in paragraph (e) of this subsection; (2) Demonstrate to AHS that the entity has existing relationships, or could readily establish relationships, with employers and employees, consumers (including uninsured and underinsured consumers), or self-employed individuals likely to be eligible for enrollment in a QHP; (3) Meet any licensing, certification or other standards prescribed by the state or AHS; (4) Not have a conflict of interest during the term as Navigator; and (5) Comply with the privacy and security standards applicable under § 4.08.
(d) Prohibition on Navigator conduct[92]	A Navigator must not: (1) Be a health insurance issuer; (2) Be a subsidiary of a health insurance issuer; (3) Be an association that includes members of, or lobbies on behalf of, the insurance industry; or (4) Receive any consideration directly or indirectly from any health insurance issuer in connection with the enrollment of any individuals or employees in a QHP or a non-QHP.
(e) Duties of a Navigator[93]	An entity that serves as a Navigator must carry out at least the following duties: (1) Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about VHC; (2) Provide information and services in a fair, accurate and impartial manner. Such information must acknowledge other health programs; (3) Distribute fair and impartial information concerning enrollment in QHPs and concerning the availability of premium tax credits and cost-sharing reductions; (4) Facilitate selection of a QHP or public health benefit program such as

[91] 45 CFR § 155.210(c).

[92] 45 CFR § 155.210(d).

[93] 45 CFR § 155.210(e).

	Medicaid or VPharm; (5) Provide referrals to any applicable office of health insurance consumer assistance, health insurance ombudsman, or any other appropriate state agency or agencies, for any individual with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage; and (6) Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by VHC, including individuals with limited English proficiency, and ensure accessibility and usability of Navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act and § 504 of the Rehabilitation Act.
(f) Funding for Navigator grants	Funding for navigator grants may not be from Federal funds received by the state to establish VHC.
5.04 Brokers (10/01/2013, 13-12F)	
(a) General rule[94]	A broker may: (1) Facilitate enrollment of an individual, employer, or employee in any QHP as soon as the QHP is offered; (2) Subject to paragraphs (b) and (c) of this subsection, assist an individual in applying for APTC and CSR; and (3) Subject to paragraphs (b) and (c) of this subsection assist an employee or an employer in enrolling in any QHP.
(b) Agreement[95]	Prior to enrolling a qualified individual, employee, or employer in a QHP through VHC, or assisting an individual in applying for APTC and CSR for a QHP, a broker must have an executed agreement with AHS, and must comply with the terms of that agreement, which includes at least the following requirements: (1) Registering with AHS in advance of assisting a qualified individual, employee or employer, enrolling in QHPs through VHC; (2) Receiving training in the range of QHP options and health-benefit programs; and (3) Complying with AHS's privacy and security standards adopted consistent with § 4.08.

[94] 45 CFR § 155.220(a); 33 V.S.A. § 1805(17).

[95] 45 CFR § 155.220(d); 33 V.S.A. § 1805(17).

(c) Payment mechanisms[96]	A broker who facilitates enrollment of an individual, employer, or employee in any QHP must comply with procedures, including payment mechanisms and standard fee or compensation schedules, established by AHS, that allow brokers to be appropriately compensated for assisting with the enrollment of qualified individuals and qualified employers in any QHP offered through VHC for which the individual or employer is eligible; and assisting a qualified individual in applying for APTC and CSR for a QHP purchased through VHC.
5.05 Certified application counselors[97] (10/01/2013, 13-12F)	
(a) In general	AHS certifies staff and volunteers of state-designated organizations to act as application counselors, authorized to provide assistance to individuals with the application process and during renewal of eligibility. To be certified, application counselors must be: (1) Authorized and registered by AHS to provide assistance at application and renewal; and (2) Effectively trained in the eligibility and benefits rules and regulations governing enrollment in a QHP and all health-benefits programs operated in the state, as implemented in the state.
(b) Certification	(1) Application counselors are certified by AHS to act on behalf of individuals with respect to one, some, or all of the permitted assistance activities, and enter into certification agreements with AHS. (2) AHS must establish: (i) A designated web portal to which only certified application counselors have access. The state must develop a secure mechanism to ensure that certified application counselors are able to perform only those activities for which they are certified. (ii) Procedures to ensure that: (A) Individuals are informed of the functions and responsibilities of certified application counselors; (B) Individuals are able to authorize application counselors to receive confidential information about the individual related to the individual's application for, or renewal of, health benefits; and (C) The state does not disclose confidential individual information to an application counselor unless the individual has authorized the application counselor to receive such information.

[96] 33 V.S.A. § 1805(17).

[97] 42 CFR § 435.908; 45 CFR § 155.225 (NPRM, 78 FR § 4593).

(c) Withdrawal of certification	AHS will establish procedures to withdraw certification from individual application counselors, or from all application counselors associated with a particular organization, when it finds noncompliance with the terms and conditions of the application counselor agreement.
(d) Availability of information; authorization	AHS will establish procedures to ensure that individuals: (1) Are informed of the functions and responsibilities of certified application counselors; and (2) Provide authorization for the disclosure of an individual's information to an application counselor prior to the application counselor helping the individual with submitting an application.
(e) No charge for services	Application counselors may not impose any charge on individuals for application assistance.

Table of Contents

Part Two
Eligibility Standards

6.00 Medicaid – in general (10/01/2013, 13-12F)

(a) In general	To qualify for Medicaid, an individual must meet nonfinancial, categorical, and financial eligibility criteria.
(b) Nonfinancial criteria	The nonfinancial criteria include the following: (1) Citizenship or non-citizenship status (§ 17.00); (2) Vermont residency (§ 21.00); (3) Social Security number requirements (§ 16.00); (4) Assignment-of-rights and cooperation requirements (§ 18.00); (5) Living-arrangement requirements (§ 20.00); (6) Pursuit of potential unearned income (§ 22.00).
(c) Categorical criteria	An individual must meet the categorical criteria (*e.g.*, age, disability, etc.) of at least one coverage group to be eligible for health benefits through the Medicaid program.
(d) Financial criteria	Although there are a few coverage groups with no financial requirements, financial eligibility generally requires that an individual have no more than a specified amount of income or, in some cases, resources. The Medicaid financial eligibility requirements are: (1) Income within the income limit appropriate to the individual's covered group. (2) Resources within the resource limit appropriate to the individual's covered group. (3) Asset-transfer limitations for an individual who needs long-term care services and supports.

7.00 Medicaid for children and adults (MCA) (10/01/2013, 13-12F)

7.01 In general (10/01/2013, 13-12F)	
	An individual is eligible for MCA if they meet the nonfinancial, categorical, and financial criteria outlined in this section.
7.02 Nonfinancial criteria (10/01/2013, 13-12F)	
	The individual must meet all of the following nonfinancial eligibility criteria for Medicaid: (a) Social Security number (§ 16.00); (b) Citizenship or immigration status (§ 17.00)[1]; (c) Residency (§ 21.00)[2]; (d) Living arrangements (§ 20.00); (e) Assignment of rights and cooperation requirements (§ 18.00) [3]; and (f) Pursuit of potential unearned income (§ 22.00).
7.03 Categorical and financial criteria (10/01/2013, 13-12F)	
(a) Coverage groups and income standards	The individual must meet the criteria for at least one of the following coverage groups:
(1) Parent and other caretaker relative[4]	A parent or caretaker relative of a dependent child (as defined in § 3.00) and their spouse, if living within the same household as the parent or caretaker relative, with a MAGI-based household income, as defined in § 28.03, that is at or below _____.
(2) Pregnant woman[5]	(i) A pregnant woman, as defined in § 3.00 with a MAGI-based household income, as defined in § 28.03, that is at or below _____.

[1] 42 CFR435.406.

[2] 42 CFR § 435.403.

[3] 42 CFR § 435.610.

[4] 42 CFR § 435.110; 42 CFR § 435.220 (NPRM, 78 FR 4593).

[5] 42 CFR § 435.116.

	(ii) *Continuous eligibility:* (A) An eligible pregnant woman who would lose eligibility because of a change in household income is deemed to continue to be eligible throughout the pregnancy and the 60-day post partum period without regard to the change in income.[6] (B) This provision applies to a medically-needy pregnant woman as follows: If the woman meets her spenddown while pregnant, her spenddown amount in any subsequent budget period during her pregnancy and post partum period cannot be any higher than her original spenddown amount. This is so, even if she experiences an increase in her household income.
(3) Child[7]	(i) An individual, who is under the age of 19, with a MAGI-based household income, as defined in § 28.03, that is at or below _____. (ii) *Continuous eligibility for a* hospitalized *child:* (A) This provision implements section 1902(e)(7) of the Act. (B) Medicaid will be provided to a child eligible and enrolled under this sub clause until the end of an inpatient stay for which inpatient services are furnished, if the child: (I) Was receiving inpatient services covered by Medicaid on the date the child is no longer eligible under this sub clause, based on the child's age or household income; and (II) Would remain eligible but for attaining such age.
(4)	[Reserved]
(5) Adult[8]	An individual, who:

[6] 42 CFR § 435.170(c) (NPRM, 78 FR 4593).

[7] 42 CFR § 435.118.

[8] 42 CFR § 435.119.

	(i) Is age 19 or older and under age 65; (ii) Is not pregnant; (iii) Is not entitled to or enrolled in Medicare under parts A or B of Title XVIII of the Act; (iv) Is not otherwise eligible for and enrolled in a mandatory coverage group;[9] and (v) Has household income that is at or below 133 percent FPL for the applicable family size.
(6) Families with Medicaid eligibility extended because of increased earnings[10]	
(i) Basis and scope	(A) This sub clause implements §§ 408(a)(11)(A), 1902(e)(1)(A), and 1931(c)(2) of the Act. (B) If Transitional Medical Assistance under § 1925 of the Act is not available or applicable, extended eligibility must be provided in accordance with this sub clause, if applicable.
(ii) Eligibility	(A) The extended eligibility period is for 4 months. (B) Medicaid coverage will be provided during an extended eligibility period to: (I) A pregnant woman who was eligible and enrolled for Medicaid under § 7.03(a)(2) with household income at or below the income limit described in (iii) of this sub clause (6) in at least 3 out of the 6 months immediately preceding the month that eligibility under such subsection was lost due to increased

[9] Note: The definition of adult in Medicaid (42 CFR § 435.119) and the Exchange (45 CFR § 155.305) rules vary with respect to whether the individual can be entitled to Medicare part B, but not yet enrolled. We have adopted the Medicaid version.

[10] 42 CFR § 435.112 (NPRM, 78 FR 4593).

	earnings; and (II) A parent or other caretaker relative who was eligible and enrolled for Medicaid under § 7.03(a)(1), and any dependent child of such parent or other caretaker relative who was eligible and enrolled under § 7.03(a)(3), in at least 3 out of the 6 months immediately preceding the month that eligibility for the parent or other caretaker relative under § 7.03(a)(1) is lost due to increased earnings.
(iii) Income limit for potential extended eligibility	The income limit for potential extended eligibility is the state's income standard for coverage of parents and other caretaker relatives under § 7.03(a)(1).
(7) Families with Medicaid eligibility extended because of increased collection of spousal support[11]	
(i) Basis	This sub clause implements §§ 408(a)(11)(B) and 1931(c)(1) of the Act.
(ii) Eligibility	(A) The extended eligibility period is for 4 months. (B) Medicaid coverage will be provided during an extended eligibility period to: (I) A pregnant woman who was eligible and enrolled for Medicaid under § 7.03(a)(2) with household income at or below the income limit described in (iii) of this sub clause (7) in at least 3 out of the 6 months immediately preceding the month that eligibility under such subsection was lost due to increased collection of spousal support; and (II) A parent or other caretaker relative who was eligible and enrolled for Medicaid

[11] 42 CFR § 435.115 (NPRM, 78 FR 4593).

	under § 7.03(a)(1), and any dependent child of such parent or other caretaker relative who was eligible and enrolled under § 7.03(a)(3), in at least 3 out of the 6 months immediately preceding the month that eligibility for the parent or other caretaker relative under § 7.03(a)(1) is lost due to increased collection of spousal support under Title IV-D of the Act.
(iii) Income limit for potential extended eligibility	The income limit for potential extended eligibility is the state's income standard for coverage of parents and other caretaker relatives under § 7.03(a)(1).
(8) Medically Needy	
(i) In general[12]	An individual under age 19, a pregnant woman, or a parent or other caretaker relative, as described above, may qualify for MCA as medically needy even if their income exceeds coverage group limits.
(ii) Income eligibility[13]	For purposes of determining medically-needy eligibility under this paragraph, AHS applies the MAGI-based methodologies defined in § 28.03 subject to the requirements of § 28.04.
(iii) Eligibility based on countable income	If countable income determined under paragraph (a)(8)(ii) of this subsection is equal to or less than the PIL for the individual's household size, the individual is eligible for Medicaid.
(iv) Resource standard	[Reserved]
(v) Spenddown rules	The rules in § 30.00 specify how an individual may use non-covered medical expenses to "spend down" their income [or resources] to the applicable limits.
(b) No resource tests	[Reserved]
8.00 Medicaid for the aged, blind, and disabled (MABD)[14]	

[12] Former Medicaid Rule 4203.

[13] 42 CFR § 435.831 (NPRM, 78 FR 4593).

[14] Former Medicaid Rules 4200 et seq.

(10/01/2013, 13-12F)	
8.01 In general (10/01/2013, 13-12F)	
	An individual is eligible for MABD if they meet the nonfinancial, categorical, and financial criteria outlined in this section.[15]
8.02 Nonfinancial criteria (10/01/2013, 13-12F)	
	The individual must meet all of the following nonfinancial eligibility criteria for MABD: (a) Social Security number (§ 16.00); (b) Citizenship or immigration status (§ 17.00); (c) Residency (§ 21.00); (d) Living arrangements (§ 20.00); (e) Assignment of rights and cooperation requirements (§ 18.00); (f) Pursuit of potential unearned income (§ 22.00).
8.03 Categorical relationship to SSI (10/01/2013, 13-12F)	
	An individual applying for MABD must establish their categorical relationship to SSI by qualifying as one or more of the following:
(a) Aged	An individual qualifying on the basis of age must be at least 65 years of age in or before the month in which eligibility begins.
(b) Blind	An individual qualifying on the basis of blindness must be: (1) Determined blind by AHS's disability determination unit, or (2) In receipt of social security disability benefits based on blindness.

[15] Individuals are not required to apply for Medicare part B as a condition of eligibility for Medicaid.

(c) Disabled	An individual qualifying on the basis of disability must be: (1) Determined disabled by AHS's disability determination unit, or (2) In receipt of social security disability benefits based on disability.
(d) Definition: blind or disabled child	A blind or disabled individual who is either single or not the head of a household; and (1) Under age 18, or (2) Under age 22 and a student regularly attending school, college, or university, or a course of vocational or technical training to prepare them for gainful employment.
8.04 Determination of blindness or disability (10/01/2013, 13-12F)	
(a) Disability and blindness determinations	Disability and blindness determinations are made by AHS in accordance with the applicable requirements of the Social Security Administration based on information supplied by the individual and by reports obtained from the physicians and other health care professionals who have treated the individual. AHS will explain the disability determination process to individuals and help them complete the required forms.
(b) Bases for a determination of disability or blindness	AHS may determine an individual is disabled in any of the following circumstances: (1) An individual who has not applied for SSI/AABD. (2) An individual who has applied for SSI/AABD and was found ineligible for a reason other than disability. (3) An individual who has applied for SSI/AABD and SSA has not made a disability determination within 90 days from the date of their application for Medicaid. (4) An individual who has been found "not disabled" by SSA, has filed a timely appeal with SSA, and a final determination has not been made by SSA.

	(5) An individual who claims that: (i) Their condition has changed or deteriorated since the most recent SSA determination of "not disabled;" (ii) A new period of disability meets the durational requirements of the Act; (iii) The SSA determination was more than 12 months ago; and (iv) They have not applied to SSA for a determination with respect to these allegations. (6) An individual who claims that: (i) Their condition has changed or deteriorated since the most recent SSA determination of "not disabled," (ii) The SSA determination was fewer than 12 months ago; (iii) A new period of disability meets the durational requirements of the Act; and (iv) They have applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations. or they no longer meet the nondisability requirements for SSI but may meet AHS's nondisability requirements for Medicaid.
(c) Additional examinations	AHS has responsibility for assuring that adequate information is obtained upon which to base the determination. If additional information is needed to determine whether individuals are disabled or blind according to the Act, consulting examinations may be required. AHS will pay the reasonable charge for any medical examinations required to render a decision on disability or blindness.
8.05 The categorically-needy coverage groups (10/01/2013, 13-12F)	
	An individual applying for MABD must meet the criteria of one or more of the following categories.
(a) Individual enrolled in	(1) An individual who is granted SSI/AABD by the SSA is automatically eligible for MABD. In

SSI/AABD[16]	addition to SSI/AABD enrollees, this group includes an individual who is: (i) Receiving SSI pending a final determination of blindness or disability; or (ii) Receiving SSI under an agreement with the SSA to dispose of resources that exceed the SSI dollar limits on resources (recoupment). (2) Medicaid eligibility for an individual in this group is automatic; there are no Medicaid income or resource standards that apply.
(b) Individual who is SSI-eligible[17]	(1) An individual who would be eligible for SSI/AABD except that they: (i) Have not applied for SSI/AABD; or (ii) Do not meet SSI/AABD requirements not applicable to Medicaid (e.g., participation in vocational rehabilitation or a substance abuse treatment program). (2) An individual in this group must: (i) Have MABD income for the individual's financial responsibility group (as defined in § 29.03) that is at or below the SSI/AABD payment level for the individual's Medicaid group (as defined in § 29.04); (ii) Have MABD resources for the individual's financial responsibility group that is at or below the SSI/AABD maximum for the individual's Medicaid group; and (iii) Meet the MABD nonfinancial criteria.
(c) Individual eligible for SSI but for earnings[18] (Section 1619(b) of the Social Security Act)	(1) An individual whom the SSA determines eligible under the Act (§1619(b)) because they meet all SSI/AABD eligibility requirements except for the amount of their earnings and who: (i) Does not have sufficient earnings to provide the reasonable equivalent of publicly-funded

[16] 42 CFR 435.120; former Medicaid Rule 4202.1.

[17] 42 CFR § 435.122; former Medicaid Rule 4202.2A.

[18] 42 CFR § 435.120(c); former Medicaid Rule 4202.2B.

	attendant care services that would be available if they did not have such earnings; and (ii) Is seriously inhibited by the lack of Medicaid coverage in their ability to continue to work or obtain employment. (2) Medicaid eligibility for an individual in this group is automatic; there are no Medicaid income or resource standards that apply.
(d) Individual with disabilities who is working (Medicaid for working people with disabilities (MWPD))	(1) An individual with disabilities who is working and, except for the amount of their income and resources, is otherwise eligible for MABD, and who: (i) Has MABD income for the individual's financial responsibility group (as defined in § 29.03), that is: (A) Below 250% of the FPL for the individual's Medicaid group (as defined in § 29.04); and (B) After disregarding their earnings,[19] Social Security Disability Insurance benefits (SSDI), and any veterans' disability benefits, has MABD income that is: (I) Less than the applicable PIL if they are in a Medicaid group of one; or (II) Less than the applicable SSI/AABD payment level if they are in a Medicaid group of two. (ii) Has resources at the time of enrollment in the group that do not exceed $5,000 for a single individual and $6,000.00 for a couple (see § 29.08(i)(8) for resource exclusion after enrollment). (2) The individual's earnings must be documented by evidence of: (i) Federal Insurance Contributions Act tax payments; (ii) Self-employment Contributions Act tax

[19] This disregard only applies to the working disabled person. No disregard is allowed for the spouse's earnings, Social Security Disability Insurance benefits (SSDI), or any veterans' disability benefits.

	payments; or (iii) A written business plan approved and supported by a third-party investor or funding source. (3) Earnings, SSDI, and veterans' disability benefits are not disregarded for an individual with spend-down requirements who does not meet all of the above requirements and seeks coverage under the medically-needy coverage group (see § 8.06).
(e) Child under 18 who lost SSI because of August 1996 change in definition of disability	An individual under the age of 18 who lost their SSI or SSI/AABD eligibility because of the more restrictive definition of disability enacted in August 1996 but who continues to meet all other MABD criteria until their 18th birthday.[20] The definition of disability for this group is the definition of childhood disability in effect prior to the 1996 revised definition.
(f) Certain spouses and surviving spouses	An individual with a disability if they meet all of the following conditions: (1) The individual is: (i) A surviving spouse; or (ii) A spouse who has obtained a legal dissolution and: (A) Was the spouse of the insured for at least 10 years; and (B) Remains single. (2) The individual meets one of the following groups of criteria under the Act:[21] (i) The individual: (A) Applied for SSI-related Medicaid no later than July 1, 1988; (B) Was receiving SSI/AABD in December 1983; (C) Lost SSI/AABD in January 1984 due to a

[20] Personal Responsibility and Work Opportunity Reconciliation Act of 1996 § 211(a); Balanced Budget Act of 1997 § 4913.

[21] SSA §§ 1634(b)(1) and 1634(d); 42 USC §§ 1383c(b)(1) and 1383c(d).

	statutory elimination of an additional benefit reduction factor for surviving spouses before attainment of age 60; (D) Has been continuously entitled to surviving spouse insurance based on disability since January 1984; and (E) Would continue to be eligible for SSI/AABD if they had not received the increase in social security disability or retirement benefits. (ii) The individual: (A) Lost SSI/AABD benefits due to a mandatory application for and receipt of social security disability, retirement or survivor benefits; (B) Is not yet eligible for Medicare Part A; (C) Is at least age 50[22], but has not yet attained age 65; and (D) Would continue to be eligible for SSI/AABD if they were not receiving social security disability or retirement benefits. (3) An individual in this group must: (i) After deducting the increase in social security disability or retirement benefits, have MABD income for the individual's financial responsibility group (as defined in § 29.03) that is at or below the SSI/AABD payment level for the individual's Medicaid group (as defined in § 29.04); (ii) Have MABD resources for the individual's financial responsibility group that is at or below the SSI/AABD maximum for the individual's Medicaid group; and (iii) Meet the MABD nonfinancial criteria.
(g) Disabled adult child (DAC)[23]	(1) An individual with a disability under the Act (§1634(c)) who:

[22] Note: 42 CFR 435.138 says at least age 60. However, it has been determined that the reference to age 50 is correct. See, POMS SI 01715.015(B)(5)(c).

[23] SSA § 1634(c); Vermont State Medicaid Plan, Attachment 2.2-A, p. 6e. Note: former Medicaid Rule 4202.5(C)(1) provided that the age requirement was "over age 18." We interpret this to mean at least age

	(i) Is at least 18 years of age; (ii) Has blindness or a disability that began before age 22; (iii) Is entitled to social security benefits on their parents' record due to retirement, death, or disability benefits and lost SSI/AABD due to receipt of this benefit or an increase in this benefit; and (iv) Would remain eligible for SSI/AABD in the absence of the social security retirement, death, or disability benefit or increases in that benefit. (2) An individual in this group must: (i) After deducting the social security benefits on their parents' record, have MABD income for the individual's financial responsibility group (as defined in § 29.03) that is at or below the SSI/AABD payment level for the individual's Medicaid group (as defined in § 29.04); (ii) Have MABD resources for the individual's financial responsibility group that is at or below the SSI/AABD maximum for the individual's Medicaid group; and (iii) Meet the MABD nonfinancial criteria.
(h) Individual eligible under the Pickle Amendment[24]	(1) An individual determined eligible under the Pickle Amendment to Title XIX of the Act (§1935(a)(5)(E)) who: (i) Is receiving social security retirement or disability benefits (OASDI); (ii) Became eligible for and received SSI or SSI/AABD for at least one month after April 1977; and (iii) Lost SSI/AABD benefits but would be eligible for them if all increases in the social security benefits due to annual cost-of-living adjustments (COLAs) were deducted from

18. We are modifying this language to more clearly reflect the appropriate age requirement for this group.

[24] Section 503 of P.L. 94-566; 42 C.F.R. § § 435.135(a)(3); Vermont State Medicaid Plan, Attachment 2.2-A, p. 8.

	their income. (2) An individual in this group must: (i) After deducting the increase in social security benefits due to annual COLAs, have MABD income for the individual's financial responsibility group (as defined in § 29.03) that is at or below the SSI/AABD payment level for the individual's Medicaid group (as defined in § 29.04); (ii) Have MABD resources for the individual's financial responsibility group that is at or below the SSI/AABD maximum for the individual's Medicaid group; and (iii) Meet the MABD nonfinancial criteria.
(i) Individual eligible for Medicaid in December 1973[25]	An individual who was eligible for Medicaid in December 1973 and meets at least one of the following criteria: (1) An institutionalized individual who was eligible for Medicaid in December 1973. or any part of that month, as an inpatient of a medical institution or intermediate care facility that was participating in the Medicaid program and who, for each consecutive month after December 1973: (i) Continues to meet the Medicaid eligibility requirements in effect in December 1973 for institutionalized individuals; (ii) Continues to reside in the institution; and (iii) Continues to be classified as needing institutionalized care. (2) A blind or disabled individual who does not meet current criteria for blindness or disability, but: (i) Was eligible for Medicaid in December 1973 as a blind or disabled individual, whether or not they were receiving cash assistance in December 1973; (ii) For each consecutive month after December 1973 continues to meet the criteria for blindness or disability and the other

[25] See 42 CFR §§ 435.131, 435.132 and 435.133.

	conditions of eligibility in effect in December 1973; (iii) Has MABD income for the individual's financial responsibility group (as defined in § 29.03) that is at or below the SSI/AABD payment level for the individual's Medicaid group (as defined in § 29.04); (iv) Has MABD resources for the individual's financial responsibility group that are at or below the SSI/AABD maximum for the individual's Medicaid group; and (v) Meets the MABD nonfinancial criteria. (3) An individual who was eligible for Medicaid in December 1973 as an essential spouse of an aged, blind, or disabled individual who was receiving cash assistance, if the following conditions are met: [26] (i) The aged, blind, or disabled individual continues to meet the December 1973 Medicaid eligibility requirements; and (ii) The essential spouse continues to meet the conditions that were in effect in December, 1973 for having their needs included in computing the payment to the aged, blind, or disabled individual.
(j) Individual eligible for AABD in August 1972[27]	(1) An individual who meets the following conditions: (i) In August 1972 the individual was entitled to social security retirement or disability and eligible for AABD, or would have been eligible if they had applied, or were not in a medical institution or intermediate care facility; and (ii) Would currently be eligible for SSI or SSI/AABD except that the 20 percent cost-of-living increase in social security benefits effective September 1972 raised their

[26] An "essential spouse" is defined as one who is living with the individual, whose needs were included in determining the amount of SSI or SSI/AABD payment to an aged, blind, or disabled individual living with the essential spouse, and who is determined essential to the individual's well-being.

[27] See 42 CFR § 435.134.

	income over the AABD limit. (2) An individual in this group must: (i) After deducting the increase in social security benefits due to COLA increase effective September 1972, have MABD income for the individual's financial responsibility group (as defined in § 29.03) that is at or below the SSI/AABD payment level for the individual's Medicaid group (as defined in § 29.04); (ii) Have MABD resources for the individual's financial responsibility group that is at or below the SSI/AABD maximum for the individual's Medicaid group; and (iii) Meet the MABD nonfinancial criteria.
(k) MABD for long-term care services	
(1) In general	
	MABD for long-term care services is provided to a qualifying individual living: (i) For at least 30 consecutive days in an institution (nursing facility, rehabilitation center, intermediate-care facility for people with developmental disabilities (ICF-DD), or another medical facility); (ii) For any length of time in a community-based setting and receiving long-term care services; and (iii) For any length of time in any setting and receiving hospice services.
(2) Individual who would be eligible for cash assistance if they were not in a medical institution[28]	

[28] 42 CFR § 435.211 (NPRM, 78 FR 4593).

(i) Basis	This section implements section 1902(a)(10)(A)(ii)(IV) of the Act.
(ii) Eligibility	An aged, blind, or disabled individual who is in an institution and who: (A) Is ineligible for SSI/AABD because of lower income standards used under the program to determine eligibility for institutionalized individuals; but (B) Would be eligible for SSI/AABD if they were not institutionalized.
(3) Individual in special income group living in institution[29]	An individual who is living in an institution and who: (i) Has lived in an institution for at least 30 consecutive days; (ii) Has MABD income for the individual's financial responsibility group (as defined in § 29.03) that does not exceed 300 percent of the maximum SSI federal payment to an individual living independently in the community (institutional income standard (IIS));[30] (iii) Has MABD resources for the individual's financial responsibility group that is at or below the SSI/AABD maximum for the individual's Medicaid group (as defined in § 29.04), except that if an individual's resources are in excess of the SSI/AABD maximum and the individual has a spouse, a resource evaluation process of assessment and allocation must be performed at the beginning of the individual's first continuous period of long-term care, as set forth in § 29.10(e); and (iv) Meets the MABD non-financial criteria.
(4) Individual in special income group who qualifies for home or community-	An individual who qualifies for home or community-based long-term care services and who: (i) Would be eligible for MABD under paragraph (k)(3) of this subsection if they were living in

[29] Former Medicaid Rule 4202.3A; 42 CFR § 435.236. This group includes the group referred to in the Vermont State Plan at Attachment 2.2-A, Page 19.

[30] For the purpose of determining income eligibility, an individual applying for MABD for long-term care is a Medicaid group of one, even if they have a spouse (see § 29.04(d) (former Medicaid Rule 4222.3).

	based long-term care services	an institution; (ii) Has MABD income for the individual's financial responsibility group (as defined at § 29.03), that is between the PIL and the IIS; and (iii) Can receive appropriate long-term medical care in the community as determined by AHS.
(5)	Individual who is receiving hospice services	An individual who is receiving hospice services and who: (i) Would be eligible for MABD under paragraph (k)(3) of this subsection if they were living in an institution; and (ii) Can receive appropriate medical care in the community, the cost of which is no greater than the estimated cost of medical care in an appropriate institution.
(6)	Disabled child in home care (DCHC, Katie Beckett)	An individual who: (i) Requires the level of care provided in an institution; (ii) Except for income or resources, would be eligible for MABD if they were living in an institution; (iii) Can receive appropriate medical care in the community, the cost of which is no greater than the estimated cost of medical care in an appropriate institution; (iv) Is age 18 or younger; (v) Has MABD income (§ 29.11), excluding their parents' income, no greater than the IIS; and (vi) Has MABD resources (§ 29.07), excluding their parents' resources, no greater than the resource limit for a Medicaid group of one.
(7)	Individual eligible for MWPD	An individual who qualifies for long-term care services and meets the financial eligibility requirements for MWPD as set forth in § 8.05(d).

8.06 Medically-needy coverage group (10/01/2013, 13-12F)

(a) In general[31]	An individual who would be a member of a categorically-needy coverage group, as described in § 8.05, may qualify for MABD as medically needy even if their income or resources exceed coverage group limits.
(b) Income standard	An otherwise-qualifying individual is eligible for this coverage group if their MABD income for the individual's financial responsibility group (as defined in § 29.03) is at or below the PIL for the individual's Medicaid group (as defined in § 29.04), or, as described in paragraph (d) of this subsection, they incur enough non-covered medical expenses to reduce their income to that level.
(c) Resource standard	To qualify for this coverage group, an individual must have MABD resources for the individual's financial responsibility group that are at or below the SSI/AABD maximum for the individual's Medicaid group, or, as described in paragraph (d) of this subsection, they incur enough expenses to reduce their resources to that level.
(d) Spenddown rules	The rules in § 30.00 specify how an individual may use non-covered medical expenses to "spend down" their income or resources to the applicable limits.
8.07 Medicare Cost-Sharing (10/01/2013, 13-12F)	
(a) In general	(1) An individual is eligible for Medicaid payment of certain Medicare costs if they meet one of the criteria specified in paragraph (b) of this subsection. (2) An individual eligible for one of the Medicare cost-sharing coverage groups identified in (b) below may also be eligible for the full range of Medicaid covered services if they also meet the requirements for one of the categorically-needy (§8.05) or medically-needy (§ 8.06) coverage groups. (3) An individual may not spend down income to meet the financial eligibility tests for these coverage groups.
(b) Coverage groups	
(1) Qualified Medicare	(i) An individual is eligible for Medicaid payment of their Medicare part A and part B

[31] Former Medicaid Rule 4203.

	Beneficiaries (QMB)[32]	premiums, deductibles, and coinsurance if the individual is: (A) A member of a Medicaid group (as defined in § 29.04) with MABD income at or below 100 percent of the FPL; and (B) Entitled to Medicare part A with or without a premium (but not entitled solely because they are eligible to enroll under § 1818A of the Act, which provides that certain working disabled individuals may enroll for premium part A). (ii) There is no resource test for this group. (iii) Benefits become effective on the first day of the calendar month immediately following the month in which the individual is determined to be eligible. (iv) Retroactive eligibility is not available.[33] (v) *Special income disregard for an individual who is receiving a monthly insurance benefit under Title II of the Social Security Act.* If an individual receives a Title II benefit, any amounts attributable to the most recent increase in the monthly insurance benefit payable as a result of a Title II cost-of-living adjustment (COLA) is not counted as income until the beginning of the second month following the month of publication of the revised annual FPL. For individuals who have Title II income, the new poverty levels are effective beginning with the month after the last month for which COLAs are disregarded. For individuals without Title II income, the new poverty levels are effective no later than the date of publication in the Federal Register.[34]
(2)	Specified Low-Income Medicare	(i) An individual is eligible for Medicaid payment of their Medicare part B premiums if the

[32] SSA § 1905(p)(1).

[33] Medicaid State Plan, Attachment 2.6-A, p. 25.

[34] Vermont gives effect to this rule by estimating the new year's FPL levels in January of each year. Vermont applies the new FPL against the new income during a January eligibility desk review. By using the adjusted FPLs, Vermont effectively disregards the title II COLA and ensures that the income increase has no negative effect on eligibility.

Beneficiaries (SLMB)[35]	individual: (A) Would be eligible for benefits as a QMB, except for income; and (B) Is a member of a Medicaid group (as defined in § 29.04) with MABD income greater than 100 percent but less than 120 percent of the FPL. (C) There is no resource test for this group. (ii) Benefits become effective on either the date of application or the date on which all eligibility criteria are met, whichever is later. (iii) Retroactive eligibility (of up to three calendar months prior to the effective date) applies if the individual met all SLMB eligibility criteria in the retroactive period. (iv) *Special income disregard for an individual who is receiving a monthly insurance benefit under Title II of the Social Security Act.* If an individual receives a Title II benefit, any amounts attributable to the most recent increase in the monthly insurance benefit payable as a result of a Title II cost-of-living adjustment (COLA) is not counted as income until the beginning of the second month following the month of publication of the revised annual FPL. For individuals who have Title II income, the new poverty levels are effective beginning with the month after the last month for which COLAs are disregarded. For individuals without Title II income, the new poverty levels are effective no later than the date of publication in the Federal Register.[36]
(3) Qualified Individuals (QI-1)[37]	(i) An individual is eligible for Medicaid payment of their Medicare part B premiums if the individual:

[35] § 1902(a)(10)(E)(iii).

[36] Vermont gives effect to this rule by estimating the new year's FPL levels in January of each year. Vermont applies the new FPL against the new income during a January eligibility desk review. By using the adjusted FPLs, Vermont effectively disregards the title II COLA and ensures that the income increase has no negative effect on eligibility.

[37] § 1902 (a)(10)(E)(iv).

	(A) Would be eligible for benefits as a QMB, except for income; (B) Is a member of a Medicaid group (as defined in § 29.04) with MABD income that is at least 120 percent but less than 135 percent of the FPL; and (C) Does not receive other federally-funded medical assistance (except for coverage for excluded drug classes under part D when the individual is enrolled in part D). (ii) There is no resource test for this group. (iii) Benefits under this provision become effective on the first day of the calendar month immediately following the month in which the individual is determined to be eligible. (iv) Retroactive eligibility (of up to three calendar months prior to application) applies if: (A) The individual met all QI-1 eligibility criteria in the retroactive period; and (B) The retroactive period is no earlier than January 1 of that calendar year.[38] (v) The benefit period ends in December of each calendar year. An individual requesting this coverage must reapply each calendar year.
(4) Qualified Disabled and Working Individuals (QDWI)	(i) An individual is eligible for Medicaid payment of their Medicare part A premiums if the individual: (A) Has lost their Medicare benefits based on disability because they returned to work; (B) Is disabled; (C) Is a member of a Medicaid group (as defined in § 29.04) with MABD income at or below 200 percent of the FPL; (D) Is a member of a Medicaid group with MABD resources at or below twice the MABD resource limit; and

[38] CMS State Medicaid Manual, § 3492.

	(E) Is not otherwise eligible for Medicaid. (ii) Benefits become effective on either the date of application or the date on which all eligibility criteria are met, whichever is later. (iii) Benefits for a retroactive period of up to three months prior to that effective date may be granted, provided that the individual meets all eligibility criteria during the retroactive period.
9.00 Special Medicaid groups (10/01/2013, 13-12F)	
9.01 In general (10/01/2013, 13-12F)	
	An individual is eligible for a special Medicaid group if they meet the nonfinancial, categorical, and financial criteria outlined in this section.
9.02 Nonfinancial criteria (10/01/2013, 13-12F)	
	The individual must meet all of the following nonfinancial eligibility criteria for Medicaid: (a) Social Security number (§ 16.00); (b) Citizenship or immigration status (§ 17.00); (c) Residency (§ 21.00); (d) Living arrangements (§ 20.00); (e) Assignment of rights and cooperation requirements (§ 18.00); and (f) Pursuit of potential unearned income (§ 22.00).
9.03 Categorical and financial criteria (10/01/2013, 13-12F)	
(a) Coverage groups and income standards	An individual must meet the criteria for at least one of the following coverage groups:
(b) Deemed newborn[39]	
(1) Basis	This provision implements §§ 1902(e)(4) and 2112(e) of the Act.

[39] 42 CFR § 435.117 (NPRM, 78 FR 4593).

(2) Eligibility	(i) Medicaid coverage will be provided to a child from birth until the child's first birthday without application if, on the date of the child's birth, the child's mother was eligible for and received covered services under the Medicaid State plan (including during a retroactive period of eligibility under § 70.01(b)) regardless of whether payment for services for the mother is limited to services necessary to treat an emergency medical condition, as defined in § 17.02(c);[40] (ii) The child is deemed to have applied and been determined eligible under the Medicaid State plan effective as of the date of birth, and remains eligible regardless of changes in circumstances (except if the child dies or ceases to be a resident of the state or the child's representative requests a voluntary termination of the child's eligibility) until the child's first birthday. (iii) A child qualifies for this group regardless of whether they continue to live with their mother. (iv) This provision applies in instances where the labor and delivery services were furnished prior to the date of application and covered by Medicaid based on retroactive eligibility. (v) Exception: A child born to a woman who has not met her spenddown on the day of delivery is ineligible for coverage under this group. (vi) There are no Medicaid income or resource standards that apply.
(3) Medicaid identification number	(i) The Medicaid identification number of the child's mother serves as the child's identification number, and all claims for covered services provided to the child may be submitted and paid under such number, unless and until AHS issues the child a separate identification number in accordance with (3)(ii) of this paragraph. (ii) AHS will issue a separate Medicaid identification number for the child prior to the

[40] Refugee Medical Assistance (Refugee Assistance Rule 5100), is not Medicaid and does not satisfy this requirement.

	effective date of any termination of the mother's eligibility or prior to the date of the child's first birthday, whichever is sooner, unless the child is determined to be ineligible (such as, because the child is not a state resident), except that AHS will issue a separate Medicaid identification number for the child promptly after it is notified of a child under 1 year of age residing in the state and born to a mother: (A) Whose coverage is limited to services necessary for the treatment of an emergency medical condition, consistent with § 17.02(c); or (B) Covered under AHS's separate CHIP.
(c) Children with adoption assistance, foster care, or guardianship care under title IV-E[41]	
(1) Basis	This provision implements §§ 1902(a)(10)(A)(i)(I) and 473(b)(3) of the Act.
(2) Eligibility	Medicaid coverage will be provided to an individual under age 21, living in Vermont for whom: (i) An adoption assistance agreement is in effect with a state or tribe under Title IV-E of the Act, regardless of whether adoption assistance is being provided or an interlocutory or other judicial decree of adoption has been issued; or (ii) Foster care or kinship guardianship assistance maintenance payments are being made by a state or tribe under Title IV-E of the Act.
(3) Income standard	There is no Medicaid income standard that applies. Committed children in the custody of the state who are not IV-E eligible must pass the applicable eligibility tests before their eligibility for Medicaid can be established.
(d) Special needs adoption[42]	

[41] 42 CFR § 435.145 (NPRM, 78 FR 4593).

[42] 42 CFR § 435.227 (NPRM, 78 FR 4593).

(1) Basis	This provision implements § 1902(a)(10)(A)(ii)(VIII) of the Act.
(2) Eligibility	Medicaid coverage will be provided to an individual under age 21: (i) For whom an adoption assistance agreement (other than an agreement under Title IV-E of the Act) between a state and the adoptive parent or parents is in effect; (ii) Whom the state agency which entered into the adoption agreement determined could not be placed for adoption without Medicaid coverage because the child has special needs for medical or rehabilitative care; and (iii) Who, prior to the adoption agreement being entered into: (A) Was eligible for Medicaid; or (B) Had household income at or below the income standard established in accordance with paragraph (d)(3) of this subsection.
(3) Income standard	There is no Medicaid income standard that applies.
(e) Former foster child[43]	
(1) Basis	This provision implements § 1902(a)(10)(A)(i)(IX) of the Act.
(2) Eligibility	Medicaid coverage will be provided to an individual who: (i) Is under age 26; (ii) Is not eligible and enrolled for mandatory coverage under § 7.03(a); and (iii) Was in foster care under the responsibility of the state and enrolled in Medicaid under the state's Medicaid State plan or 1115 demonstration upon attaining age 18.
(3) Income standard	There is no Medicaid income standard that applies.

[43] 42 CFR § 435.150 (NPRM, 78 FR 4593); Social Security Act § 1902(a)(10)(A)(i)(IX).

(f) Individual with breast or cervical cancer[44]	
(1) Basis	This provision implements §§ 1902(a)(10)(A)(ii)(XVIII) and 1902(aa) of the Act.
(2) Eligibility	(i) Medicaid coverage will be provided to an individual who: (A) Is under age 65; (B) Is not eligible and enrolled for mandatory coverage under the state's Medicaid State plan; (C) Has been determined to need treatment for breast or cervical cancer through a screening under the Centers for Disease Control and Prevention (CDC) breast and cervical cancer early detection program (BCCEDP);[45] and (D) Does not otherwise have creditable coverage, as defined in § 2704(c) of the Public Health Service Act, for treatment of their breast or cervical cancer. Creditable coverage is not considered to be available just because the individual may: (I) Receive medical services provided by the Indian Health Service, a tribal organization, or an Urban Indian organization; or (II) Obtain health insurance coverage only after a waiting period of uninsurance. (ii) A woman whose eligibility is based on this group is entitled to full Medicaid coverage; coverage is not limited to coverage for treatment of breast and cervical cancer. (iii) Medicaid eligibility for an individual in this group begins following the screening and diagnosis and continues as long as a treating

[44] CMS State Health Official Letter, dated January 4, 2001, available at http://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/sho010401.pdf.

[45] A woman is considered to have been screened and eligible for this group if she has received a screening mammogram, clinical breast exam, or Pap test; or diagnostic services following an abnormal clinical breast exam, mammogram, or Pap test; and a diagnosis of breast or cervical cancer or of a pre-cancerous condition of the breast or cervix as the result of the screening or diagnostic service.

	health professional verifies the woman is in need of cancer treatment services. (iv) There is no waiting period of prior uninsurance before a woman who has been screened can become eligible for Medicaid under this group.
(3) Treatment need	An individual is considered to need treatment for breast or cervical cancer if, in the opinion of the individual's treating health professional (i.e., the individual who conducts the screen or any other health professional with whom the individual consults), the screen (and diagnostic evaluation following the clinical screening) determines that: (i) Definitive treatment for breast or cervical cancer is needed, including a precancerous condition or early stage cancer, and which may include diagnostic services as necessary to determine the extent and proper course of treatment; and (ii) More than routine diagnostic services or monitoring services for a precancerous breast or cervical condition are needed.
(4) Income standard	In order to qualify for screening under (f)(2)(i)(C) above, a woman must be determined by BCCEDP to have limited income. In addition to meeting the criteria described in this paragraph (f), the woman must meet all other Medicaid nonfinancial criteria.
(g) Family planning services[46]	
(1) Basis	This provision implements §§ 1902(a)(10)(A)(ii)(XXI) and 1902(ii) and clause (XVI) in the matter following 1902(a)(10)(G) of the Act.
(2) Eligibility	Medicaid coverage will be provided to an individual (male and female) who meets all of the following requirements: (i) Is not pregnant; and (ii) Meets the income eligibility requirements at paragraph (g)(3) of this subsection.

[46] 42 CFR § 435.214 (NPRM, 78 FR 4593)

(3) Income standard	The individual has a MAGI-based household income (as defined in § 28.03) that is at or below the income standard for a pregnant woman as described in § 7.03(a)(2). The individual's household income is determined in accordance with § 28.03(i).
(4) Covered services	An individual eligible under this paragraph is covered for family planning and family planning-related benefits.
(h) HIV/AIDS	See, HIVAIDS Rule 5800 *et seq.*
(i) Refugee Medical Assistance	See, Refugee Medical Assistance Rule 5100 *et seq.*
(j) Targeted low-income children[47]	[Reserved]
10.00 Pharmacy benefits (10/01/2013, 13-12F)	
10.01 VPharm program (10/01/2013, 13-12F)	
The VPharm program rules located in Rule 5400 et seq. will remain in effect.	
10.02 Healthy Vermonter Program (HVP) (10/01/2013, 13-12F)	
The Healthy Vermonter Program (HVP) rules located in Rule 5700 et seq. will remain in effect.	
11.00 Enrollment in a QHP (10/01/2013, 13-12F)	
11.01 In general (10/01/2013, 13-12F)	
Eligibility for enrollment in a QHP[48]	An individual is eligible for enrollment in a QHP if the individual meets the nonfinancial criteria outlined in this section.
11.02 Nonfinancial criteria (10/01/2013, 13-12F)	
	The individual must meet all of the following nonfinancial criteria: (a) Citizenship, status as a national, or lawful presence

[47] 42 CFR § 457.310

[48] 45 CFR § 155.305(a).

	(§ 17.00). The individual must be reasonably expected to be a citizen, national, or a non-citizen who is lawfully present for the entire period for which enrollment is sought; (b) Incarceration (§ 19.00); and (c) Residency (§ 21.00).
11.03 Eligibility for QHP enrollment periods[49] (10/01/2013, 13-12F)	
	An individual is eligible for a QHP enrollment period if they meet the criteria for an enrollment period, as specified in § 71.00.
12.00 Advance payments of the premium tax credit (APTC) (10/01/2013, 13-12F)	
12.01 In general (10/01/2013, 13-12F)	
	An individual is eligible for APTC if the individual meets the criteria outlined in this section.
12.02 Nonfinancial criteria[50] (10/01/2013, 13-12F)	
	An applicable tax filer (as defined in § 12.03) is eligible for APTC for any month in which one or more applicants for whom the tax filer expects to claim a personal exemption deduction on their tax return for the benefit year, including the tax filer and their spouse: (a) Meets the requirements for eligibility for enrollment in a QHP; and (b) Is not eligible for MEC (within the meaning of § 23.00) other than individual coverage offered through VHC.[51]

[49] 45 CFR § 155.305(b).

[50] See generally, 26 CFR § 1.36B-2 and 45 CFR § 155.305(f).

[51] 26 CFR § 1.36B-2(a)(2) provides that, to considered an applicable tax filer, the individual must not be eligible for minimum essential coverage "other than coverage described in section 5000A(f)(1)(C)" of the Tax Code. That provision relates to "coverage under a health plan offered in the individual market within a State." 26 USC § § 5000A(f)(1)(C). As individuals can only purchase coverage in Vermont through the Exchange, 33 V.S.A. § 1811(b), we interpret this to mean that, to qualify as an applicable tax filer, the individual must not be eligible for minimum essential coverage "other than coverage offered on the Exchange."

12.03 Applicable tax filer[52] (10/01/2013, 13-12F)	
(a) In general	Except as otherwise provided in this subsection, an applicable tax filer is a tax filer who expects to have household income, as defined in § 28.05(b) of at least 100 percent but not more than 400 percent of the FPL for the tax filer's family size for the benefit year.
(b) Married tax filers must file joint return[53]	A tax filer who is married (within the meaning of 26 USC § 7703) at the close of the benefit year is an applicable tax filer only if the tax filer and the tax filer's spouse file a joint return for the benefit year.
(c) Tax dependent	An individual is not an applicable tax filer if another tax filer may claim a deduction under 26 USC § 151 for the individual for a benefit year beginning in the calendar year in which the individual's benefit year begins.
(d) Individual not lawfully present or incarcerated[54]	An individual who is not lawfully present in the United States or is incarcerated (other than incarceration pending disposition of charges) is not eligible to enroll in a QHP. However, the individual may be an applicable tax filer if a family member is eligible to enroll in a QHP.
(e) Individual lawfully present	An individual is also an applicable tax filer if: (1) The tax filer would be an applicable tax filer but for income; (2) The tax filer expects to have household income of less than 100 percent of the FPL for the tax filer's family size for the benefit year for which coverage is requested; (3) One or more applicants for whom the tax filer expects to claim a personal exemption deduction on their tax return for the benefit year, including the tax filer and spouse, is a non-citizen who is lawfully present and ineligible for Medicaid by reason of immigration status.

[52] 26 CFR § 1.36B-2(b); 45 CFR § 155.305 (NPRM, 78 FR 4593).

[53] 26 CFR § 1.36B-2(b)(2). The IRS currently defines marriage, for federal tax purposes, as "only a legal union between a man and a woman as husband and wife." The word "spouse" means "a person of the opposite sex who is a husband or a wife." IRS Publication 501, available at http://www.irs.gov/publications/p501/ar02.html#en_US_2011_publink1000220722.

[54] See, ACA §§ 1312(f)(1)(B) and 1312(f)(3) (42 USC § 18032(f)(1)(B) and (f)(3)) and 26 CFR § 1.36B-2(b)(4).

(f) Special rule for tax filers with household income below 100 percent of the FPL for the benefit year[55]	A tax filer (other than a tax filer described in paragraph (e) of this subsection) whose household income for a benefit year is less than 100 percent of the FPL for the tax filer's family size is treated as an applicable tax filer if: (1) The tax filer or a family member enrolls in a QHP; (2) AHS estimates at the time of enrollment that the tax filer's household income will be at least 100 but not more than 400 percent of the FPL for the benefit year; (3) APTCs are authorized and paid for one or more months during the benefit year; and (4) The tax filer would be an applicable tax filer if the tax filer's household income for the benefit year was at least 100 but not more than 400 percent of the FPL for the tax filer's family size.
(g) Computation of premium-assistance amounts for tax filers with household income below 100 percent of the FPL.	If a tax filer is treated as an applicable tax filer under paragraph (e) or (f) of this subsection, the tax filer's actual household income for the benefit year is used to compute the premium-assistance amounts under § 60.00.
12.04 Enrollment required[56] (10/01/2013, 13-12F)	
	APTC will only be provided on behalf of a tax filer if one or more applicants for whom the tax filer attests that they expect to claim a personal exemption deduction for the benefit year, including the tax filer and spouse, is enrolled in a QHP.
12.05 Compliance with filing requirement[57] (10/01/2013, 13-12F)	
	AHS may not determine a tax filer eligible for APTC if HHS notifies AHS as part of the process described in § 56.03 that APTCs were made on behalf of the tax filer or either spouse if the tax filer is a married couple for a

[55] 26 CFR § 1.36B-2(b)(6).

[56] 45 CFR § 155.305(f)(3) (NPRM. 78 FR 4593).

[57] 45 CFR § 155.305(f)(4).

	year for which tax data would be utilized for verification of household income and family size in accordance with § 56.01(a), and the tax filer or their spouse did not comply with the requirement to file an income tax return for that year as required by 26 USC § 6011, 6012, and implementing regulations, and reconcile the APTCs for that period.

13.00 Cost-sharing reductions (CSR) (10/01/2013, 13-12F)

13.01 Eligibility criteria[58] (10/01/2013, 13-12F)

(a) An individual is eligible for CSR if the individual:

(1) Meets the requirements for eligibility for enrollment in a QHP, as specified in § 11.00;

(2) Meets the requirements for APTC, as specified § 12.00; and

(3) Is expected to have a household income, as defined in § 28.05(b), that does not exceed 250 percent of the FPL for the benefit year for which coverage is requested.

(b) An individual who is not an Indian may receive CSR only if they are enrolled in a silver-level QHP.

13.02 Eligibility categories[59] (10/01/2013, 13-12F)

The following eligibility categories for CSR will be used when making eligibility determinations under this section:

(a) An individual who is expected to have a household income at least 100 but not more than 150 percent of the FPL for the benefit year for which coverage is requested, or for an individual who is eligible for APTC under § 12.03(e), a household income less than 100 percent of the FPL for the benefit year for which coverage is requested;

(b) An individual is expected to have a household income greater than 150 but not more than 200 percent of the FPL for the benefit year for which coverage is requested; and

[58] 45 CFR § 155.305(g).

[59] 45 CFR § 155.305(g)(2).

	(c) An individual who is expected to have a household income greater than 200 but not more than 250 percent of the FPL for the benefit year for which coverage is requested.
13.03 Special rule for family policies[60] (10/01/2013, 13-12F)	
	To the extent that an enrollment in a QHP under a single policy covers two or more individuals who, if they were to enroll in separate policies would be eligible for different cost sharing, AHS will deem the individuals under such policy to be collectively eligible only for the category of eligibility last listed below for which all the individuals covered by the policy would be eligible. (a) Individuals not eligible for changes to cost sharing; (b) § 59.02 (Special cost-sharing rules for Indians, regardless of income); (c) § 13.02(c); (d) §13.02(b); (e) § 13.02(a); (f) § 59.01 (Eligibility for CSR for Indians)
14.00 Eligibility for enrollment in a catastrophic plan (10/01/2013, 13-12F)	
	An individual is eligible for enrollment in a catastrophic plan[61] if they: (a) Have not attained the age of 30 before the beginning of the plan year; or (b) Have a certification in effect for any plan year that they are exempt from the requirement to maintain MEC by reason of: (1) Coverage being unaffordable (see § 23.02); or (2) Hardship (see § 23.06).

[60] 45 CFR § 155.305(g)(3).

[61] 45 CFR § 156.155.

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Part Three
Nonfinancial eligibility requirements

15.00 Nonfinancial eligibility requirements, in general (10/01/2013, 13-12F)

This part catalogs the nonfinancial eligibility requirements that apply across all health-benefits programs. The provisions that assign these requirements to particular programs are set forth in part two of this rule.

16.00 Social Security number (10/01/2013, 13-12F)

16.01 Medicaid[1] (10/01/2013, 13-12F)

(a) In general

(1) Except as provided in paragraph (b) of this subsection, as a condition of Medicaid eligibility, each individual (including children) seeking Medicaid must furnish his or her Social Security numbers.

(2) AHS will advise the individual of:

(i) The statute or other authority under which it is requesting the individual's Social Security number; and

(ii) The uses that will be made of each Social Security number, including its use for verifying income, eligibility, and amount of medical assistance payments under §§ 53.00 through 56.00.

(3) If an individual cannot recall their Social Security number or Social Security numbers or has not been issued a Social Security number, AHS will:

(i) Assist the individual in completing an application for a Social Security number;

(ii) Obtain evidence required under SSA regulations to establish the age, the citizenship or non-citizenship status, and the true identity of the individual; and

(iii) Either send the application to SSA or, if there is evidence that the individual has previously been issued a Social Security number, request SSA to furnish the number.

(4) Services to an otherwise eligible individual will not be denied or delayed pending issuance or verification of the individual's Social Security number by SSA or if the individual meets one of the exceptions in paragraph (b) of this subsection.

(5) The Social Security number furnished by an individual will be verified to insure the Social Security number was issued to that individual, and to

[1] 42 CFR § 435.910; 45 CFR § 155.310(a)(3).

	determine whether any other Social Security numbers were issued to that individual.
(b) Medicaid Exception	(1) The requirement of paragraph (a) of this subsection does not apply, and a Medicaid identification number will be given, to an individual who: (i) Is not eligible to receive a Social Security number; (ii) Does not have a Social Security number and may only be issued a Social Security number for a valid non-work reason in accordance with 20 CFR 422.104; or (iii) Refuses to obtain a Social Security number because of well-established religious objections. (2) The identification number may be either a Social Security number obtained on the individual's behalf or another unique identifier. (3) An individual who has a Social Security number is not subject to this exception and must provide such number.
(c) Social Security numbers of Medicaid non-applicants[2]	The Social Security number of a person who is not applying for Medicaid for himself or herself may be requested provided that: (1) Provision of such Social Security number is voluntary; (2) Such Social Security number is used only to determine an applicant's or enrollee's eligibility for a health-benefit program or for a purpose directly connected to the administration of the state plan; and (3) At the time such Social Security number is requested, clear notice is provided to the individual seeking assistance, or person acting on such individual's behalf, that provision of the non-applicant's Social Security number is voluntary and information regarding how the Social Security number will be used.
16.02 QHP[3] (10/01/2013; 13-12F)	
	(a) An individual applying for a QHP, with or without APTC or CSR, and who has a Social Security number must provide it. (b) Except as provided in paragraph (c) of this subsection, a person who is not seeking coverage for himself or herself need not provide a Social Security number. (c) An application filer seeking APTC must provide the Social Security number of a tax filer who is not an applicant only if an applicant attests that the tax

[2] 42 CFR § 435.907(e)(3).

[3] 45 CFR § 155.310(a)(3).

	filer has a Social Security number and filed a tax return for the year for which tax data would be utilized for verification of household income and family size.[4]
17.00 Citizenship and immigration status[5] (10/01/2013, 13-12F)	
17.01 Definitions (10/01/2013, 13-12F)	
(a) U.S. Citizen	(1) An individual born in the 50 states, the District of Columbia, Puerto Rico, Guam, Virgin Islands, and the Northern Mariana Islands (except for individuals born to foreign diplomats); (2) A naturalized citizen; or (3) An individual who otherwise qualifies for U.S. citizenship under § 301 of the Immigration and Nationality Act (INA), 8 USC §§ 1401.
(b) Citizenship[6]	Includes status as a "national of the United States" that includes both citizens of the United States and non-citizen nationals of the United States.
(c) National[7]	(1) An individual who: (i) Is a U.S. citizen; or (ii) Though not a citizen, owes permanent allegiance to the United States. (2) For purposes of determining health-benefits eligibility, including verification requirements, citizens and non-citizen nationals of the United States are treated the same. (3) As a practical matter, non-citizen nationals include individuals born in American Samoa or Swains Island.
(d) Qualified non-citizen[8]	An individual who is: (1) A lawful, permanent resident of the United States (LPR);

[4] 45 CFR § 155.305(f)(6).

[5] This section establishes the health-benefits citizenship and immigration-status eligibility requirements. Rules covering the related attestation and verification requirements and outlining documentary evidence are set forth in section 31.00.

[6] 42 CFR § 435.4 (NPRM, 78 FR 4593).

[7] 8 USC § 1101(a)(22).

[8] 42 CFR § 435.4 (NPRM, 78 FR 4593) ("qualified non-citizen" has the same meaning as the term "qualified alien" as defined at 8 USC § 1641(b) and (c)); 42 USC § 435.406(a)(2).

(2) A refugee, including:

(i) An individual admitted to the United States under § 207 of the Immigration and Nationality Act (INA);

(ii) A Cuban or Haitian entrant, as defined in § 501(e)(2) of the Refugee Education Assistance Act of 1980. There are three general categories of individuals who are considered "Cuban and Haitian entrants." A Haitian national meets the definition of "Cuban and Haitian entrant" if he or she:

(A) Was granted parole status as a Cuban/Haitian entrant (Status Pending) on or after April 21, 1980 or has been paroled into the United States on or after October 10, 1980;

(B) Is the subject of removal, deportation or exclusion proceedings under the Immigration and Nationality Act and with respect to whom a final, nonappealable, and legally enforceable order of removal, deportation or exclusion has not been entered; or

(C) Has an application for asylum pending with the Department of Homeland Security (DHS) and with respect to whom a final, nonappealable, and legally enforceable order of removal, deportation or exclusion has not been entered.

(3) An Amerasian, admitted to the United States under § 584 of the Foreign Operations Export Financing, and Related Programs Appropriation Act, 1988 (as contained in § 101(e) of Public Law 100-202 and amended by the 9th proviso under Migration and Refugee Assistance in title II of the Foreign Operations Export Financing, and Related Programs Act, 1989, Public Law 100-461, as amended);

(4) An asylee, as defined in § 208 of the INA;

(5) A non-citizen whose deportation has been withheld under:

(i) § 243(h) of the INA, as in effect prior to April 1, 1997, (the effective date of § 307 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), division C of Public Law 104-208); or

(ii) § 241(b)(3) of the INA, as amended by § 305(a) of division C of Public Law 104-208;

(6) An non-citizen who has been granted parole for at least one year by the USCIS under § 212(d)(5) of the INA;

(7) A non-citizen who has been granted conditional entry under § 203(a)(7) of the INA;

(8) A battered non-citizen, as defined in paragraph (e) of this subsection;

(9) A victim of a severe form of trafficking, in accordance with § 107(b)(1)

	of the Trafficking Victims Protection Act of 2000; or (10) An American Indian, born outside the U.S. and who enters and re-enters and resides in the U.S. is, for Medicaid purposes, considered a lawful permanent resident and, as such, a qualified non-citizen. This includes: (i) An American Indian who was born in Canada and who is of at least one-half American Indian blood. This does not include the non-citizen spouse or child of such an Indian or a non-citizen whose membership in an Indian tribe or family is created by adoption, unless such person is of at least 50% American Indian blood. (ii) An American Indian who is a member of a Federally-recognized Indian tribe, as defined in § 4(e) of the Indian Self-Determination and Education Assistance Act, 25 USC § § 450b(e).[9]
(e) Battered non-citizen	(1) An individual who is: (i) A victim of battering or cruelty by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the victim and the spouse or parent consented to, or acquiesced in the battery or cruelty; (ii) The parent of a child who has been such a victim, provided that the individual did not actively participate in the battery or cruelty; or (iii) The child residing in the same household of such a victim. (2) For the purposes of establishing qualified non-citizen status, the battered non-citizen must meet all of the following conditions: (i) The individual must no longer be residing in the same household as the perpetrator of the abuse or cruelty; (ii) The battery or cruelty must have a substantial connection with the need for medical assistance; and (iii) The individual must have been approved for legal immigration status, or have a petition pending that makes a prima facie case for legal immigration status, under one of the following categories: (A) Permanent residence under the Violence Against Women Act (VAWA); (B) A pending or approved petition for legal permanent residence filed by a spouse or parent on USCIS Form I-130 or Form I-129f; or (C) Suspension of deportation or cancellation of removal under VAWA.

[9] Abenaki is not a federally-recognized tribe.

(f) Nonqualified non-citizen	A non-citizen who does not meet the definition of qualified non-citizen (§17.01(d)).
(g) Lawfully present in the United States	An individual who is a non-citizen and who: (1) Is a qualified non-citizen, as defined in paragraph (d) of this subsection; (2) Is in a valid nonimmigrant status, as defined in 8 USC § 1101(a)(15) or otherwise under the immigration laws (as defined in 8 USC § 1101(a)(17)); (3) Is paroled into the United States in accordance with 8 USC § 1182(d)(5) for less than 1 year, except for an individual paroled for prosecution, for deferred inspection or pending removal proceedings; (4) Belongs to one of the following classes: (i) Granted temporary resident status in accordance with 8 USC § 1160 or 1255a, respectively; (ii) Granted Temporary Protected Status (TPS) in accordance with 8 USC § 1254a, and individuals with pending applications for TPS who have been granted employment authorization; (iii) Granted employment authorization under 8 CFR 274a.12(c); (iv) Family Unity beneficiaries in accordance with § 301 of 101, as amended; (v) Under Deferred Enforced Departure (DED) in accordance with a decision made by the President; (vi) Granted Deferred Action status; (vii) Granted an administrative stay of removal under 8 CFR part 241; (viii) Beneficiary of approved visa petition who has a pending application for adjustment of status; (5) Is an individual with a pending application for asylum under 8 USC § 1158, or for withholding of removal under 8 USC § 1231, or under the Convention Against Torture who— (i) Has been granted employment authorization; or (ii) Is under the age of 14 and has had an application pending for at least 180 days; (6) Has been granted withholding of removal under the Convention Against Torture; (7) Is a child who has a pending application for Special Immigrant Juvenile

	status as described in 8 USC § 1101(a)(27)(J); (8) Is lawfully present in American Samoa under the immigration laws of American Samoa; or (9) Is a victim of a severe form of trafficking in persons, in accordance with the Victims of Trafficking and Violence Protection Act of 2000, Public Law 106-386, as amended (22 USC § 7105(b)). (10) Exception. An individual with deferred action under DHS's deferred action for childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012, memorandum, shall not be considered to be lawfully present with respect to any of the above categories in paragraphs (1) through (9) of this definition.
(h) Non-citizen[10]	Has the same meaning as the term "alien," as defined in section 101(a)(3) of the INA, (8 U.S.C. 1101(a)(3)) and includes any individual who is not a citizen or national of the United States, defined at 8 U.S.C. 1101(a)(22).
17.02 General Rules (10/01/2013, 13-12F)	
(a) Health benefits, in general	Except as provided in paragraphs (b) and (c) of this subsection, as a condition of eligibility for health benefits, an individual must be: (1) A citizen or national of the United States; (2) A qualified non-citizen, who is not subject to the five-year bar (§17.03(b)); or (3) Lawfully present in the United States and: (i) Under 21 years of age, or (ii) A woman during pregnancy and the 60-day post partum period.
(b) Enrollment in a QHP, with or without APTC or cost-sharing subsidies	An individual who is lawfully present in the United States is eligible for enrollment in a QHP, with or without APTC or CSR, if the individual otherwise satisfies the eligibility requirements for those health benefits.
(c) Emergency medical services[11]	An individual who is ineligible for Medicaid solely because of immigration status is eligible for the treatment of emergency medical conditions if all of the following conditions are met: (1) The individual has, after sudden onset, a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in

[10] 42 CFR § 435.4 (NPRM, 78 FR 4593).

[11] A legally-present individual who is eligible for but unenrolled in a QHP, with or without subsidies, is nevertheless eligible for emergency Medicaid. See CMS Response to Comment, 77 FR 17144, 17170.

	serious: (i) Jeopardy to the individual's health; (ii) Impairment of bodily functions; or (iii) Dysfunction of any bodily organ or part. (2) Emergency medical services are not related to either an organ transplant procedure or routine prenatal or post partum care. (3) The individual meets all eligibility requirements for Medicaid except: (i) Verification of non-citizen status; and (ii) For undocumented non-citizens, verification of a Social Security number.
17.03 Medicaid five-year bar for qualified non-citizens (10/01/2013, 13-12F)	
(a) Qualified non-citizens subject to 5-year bar[12]	Non-citizens who enter the United States on or after August 22, 1996, as qualified non-citizens are not eligible to receive Medicaid for five years from the date they enter the country. If they are not qualified non-citizens when they enter, the five-year bar begins the date they become a qualified non-citizen. The following qualified non-citizens are subject to the five-year bar: (1) Lawful permanent residents (LPRs); (2) Non-citizens granted parole for at least one year; (3) Non-citizens granted conditional entry (however, as a practical matter the five-year bar will never apply to such non-citizens, since, by definition, they entered the U.S. and obtained qualified non-citizen status prior to August 22, 1996); and (4) Battered non-citizens.
(b) Qualified non-citizens not subject to 5-year bar[13]	The following qualified non-citizens are not subject to the five-year bar: (1) Refugees; (2) Asylees; (3) Cuban and Haitian Entrants;[14]

[12] 42 CFR § 435.406(a)(2); 8 USC § § 1613(a).

[13] 42 CFR § 435.406(a)(2); 8 USC § § 1613(b).

[14] From former PP&D at 4172.

	(4) Victims of a severe form of trafficking; (5) Non-citizens whose deportation is being withheld; (6) Qualified non-citizens who are: (i) Honorably discharged veterans; (ii) On active duty in the U.S. military; or (iii) The spouse (including a surviving spouse who has not remarried) or unmarried dependent child of an honorably discharged veteran or individual on active duty in the U.S. Military; (7) Non-citizens admitted to the country as Amerasian immigrants; (8) Legal permanent residents who first entered the United States under another exempt category (i.e., as a refugee, asylee, Cuban or Haitian entrant, trafficking victim, or non-citizen whose deportation was being withheld) and who later converted to the LPR status. (9) Haitians granted Humanitarian Parole status; and (10) Citizens and nationals of Iraq and Afghanistan with Special Immigrant status.[15]
(c) Non-citizens not subject to 5-year bar[16]	The five-year bar does not apply to: (1) Non-citizens who are applying for treatment of an emergency medical condition only; (2) Non-citizens who entered the United States and became qualified non-citizens prior to August 22, 1996; and (3) Non-citizens who entered prior to August 22, 1996, and remained "continuously present" in the United States until becoming a qualified non-citizen on or after that date. Any single absence of more than 30 consecutive days or a combined total absence of 90 days before obtaining qualified non-citizen status is considered to interrupt "continuous presence." (i) Non-citizens who do not meet "continuous presence" are subject to the five-year bar beginning from the date they become a qualified non-citizen. (ii) Non-citizens do not have to remain continuously present in the United

[15] From former PP&D at 4173.

[16] Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Act of 1996; 62 Federal Register 61344 and 61415 (November 17, 1997).

States after obtaining qualified non-citizen status.

(4) Members of a Federally-recognized Indian tribe;

(5) American Indians born in Canada to whom § 289 of the INA applies; and

(6) Children up to 21 years of age and women during pregnancy and the 60-day postpartum period, who are lawfully residing in the United States and otherwise eligible. This exemption applies only to children in the group defined at § 7.03(a)(3) and pregnant women in the group defined at § 7.03(a)(2). AHS will verify that the child or pregnant woman is lawfully residing in the United States at the time of the individual's initial eligibility determination and at the time of eligibility redeterminations. A child or pregnant woman will be considered to be lawfully residing in the United States if they are:

(i) A qualified non-citizen as defined in § 431 of PRWORA (8 USC § 1641)(see 17.01(d));

(ii) A non-citizen in non-immigration status who has not violated the terms of the status under which they were admitted or to which they have changed after admission;

(iii) A non-citizen who has been paroled into the United States pursuant to § 212(d)(5) of the INA (8 USC § 1182(d)(5)) for less than 1 year, except for a non-citizen paroled for prosecution, for deferred inspection or pending removal proceedings;

(iv) A non-citizen who belongs to one of the following classes:

(A) Non-citizens currently in temporary resident status pursuant to § 210 or 245A of the INA (8 USC § 1160 or 1255a, respectively);

(B) Non-citizens currently under Temporary Protected Status (TPS) pursuant to § 244 of the INA (8 USC § 1254a), and pending applicants for TPS who have been granted employment authorization;

(C) Non-citizens who have been granted employment authorization under 8 CFR § 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);

(D) Family Unity beneficiaries pursuant to § 301 of Pub. L. 101-649, as amended;

(E) Non-citizens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;

(F) Non-citizens currently in deferred action status; or

(G) Non-citizens whose visa petitions have been approved and who have pending applications for adjustment of status;

(v) A pending applicant for asylum under § 208(a) of the INA (8 USC §

	1158) or for withholding of removal under § 241(b)(3) of the INA (8 USC § 1231) or under the convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days; (vi) A non-citizen who has been granted withholding of removal under the Convention Against Torture; or (vii) A child who has a pending application for Special Immigrant Juvenile status as described in § 101(a)(27)(J) of the INA (8 USC § 1101(a)(27)(J)).
(d) Ineligible non-citizens/nonimmigrants	The following categories of individuals are ineligible non-citizens/non-immigrants and are not eligible for Medicaid: (1) Foreign government representatives on official business and their families and servants; (2) Visitors for business or pleasure, including exchange visitors; (3) Non-citizens in travel status while traveling directly through the U.S.; (4) Crewmen on shore leave; (5) Foreign students; (6) International organization representation personnel and their families and servants; (7) Temporary workers including agricultural contract workers; and (8) Members of foreign press, radio, film, or other information media and their families.
18.00 Assignment of rights and cooperation requirements for Medicaid (10/01/2013, 13-12F)	
18.01 In general[17] (10/01/2013, 13-12F)	
	As a condition of initial and continuing eligibility, a legally-able individual who is applying for or enrolled in Medicaid must meet the requirements related to the pursuit of medical support, third-party payments, and the requirement to enroll or remain enrolled in a group health insurance plan, as provided for below.
18.02 Assignment of rights to payments (10/01/2013, 13-12F)	
(a) In general	An individual who is applying for, or enrolled in Medicaid, with the legal authority to do so, must assign their rights to medical support and third-party payments for medical care. If they have the legal authority to do so, they must also assign the

[17] 42 CFR § 435.610; Former Medicaid Rules 4138-4138.4.

	rights of any other individual who is applying for or enrolled in Medicaid to such support and payments.
(b) Exceptions	No assignment is required for: (1) Medicare payments; or (2) Cash payments from the Department of Veterans Affairs for aid and attendance.
18.03 Cooperation in Obtaining Payments (10/01/2013, 13-12F)	
(a) In general	(1) Applicants must attest that they will cooperate, and enrollees must cooperate in: (i) Establishing paternity and in obtaining medical support and payments, unless the individual establishes good cause for not cooperating or is a pregnant woman described in § 7.03(a)(2); and (ii) Identifying and providing information to assist in pursuing third parties who may be liable to pay for care and services under the plan, unless the individual establishes good cause for not cooperating. (2) To meet this requirement, an individual may be required to: (i) Provide information or evidence relevant and essential to obtain such support or payments; (ii) Appear as a witness in court or at another proceeding; (iii) Provide information or attest to lack of information under penalty of perjury; or (iv) Take any other reasonable steps necessary for establishing parentage or securing medical support or third-party payments.
(b) Exception	An unmarried pregnant woman with income under 200 percent of the FPL is exempted from the requirement to cooperate in establishing paternity or obtaining medical support and payments from, or derived from, the father of the child she expects to deliver or from the father of any of her children born out-of-wedlock. She shall remain exempt through the end of the calendar month in which the 60-day period beginning with the date of her delivery ends.
18.04 Good cause for noncooperation (10/01/2013, 13-12F)	
(a) In general	An individual who is applying for or enrolled in Medicaid may request a waiver of the cooperation requirement under § 18.03. Those to whom a good-cause waiver for noncooperation has been granted are eligible for Medicaid, provided that all other program requirements are met. AHS will grant such waivers when either of the following circumstances has been substantiated to AHS's satisfaction: (1) Compliance with the cooperation requirement is reasonably anticipated

	to result in physical or emotional harm to the individual responsible for cooperating or the person for whom medical support or third-party payments are sought. Emotional harm means an emotional impairment that substantially affects an individual's functioning; or (2) Compliance with the cooperation requirement would entail pursuit of medical support for a child: (i) Conceived as a result of incest or rape from the father of that child; (ii) For whom adoption proceedings are pending; or (iii) For whom adoptive placement is under active consideration.
(b) Required documentation	An Individual requesting a waiver of the cooperation requirement bears the primary responsibility for providing the documentation AHS deems necessary to substantiate their claims of good cause. AHS will consider an individual who has requested a good-cause waiver and submitted the required documentation to be eligible for Medicaid while a decision on the request is pending.
18.05 Enrollment in a health insurance plan (10/01/2013, 13-12F)	
	(a) An individual who is applying for, or enrolled in Medicaid, may be required to enroll or remain enrolled in a group health insurance plan for which AHS pays the premiums. (See Medicaid Covered Services Rule (MCSR) 7108.) Payment of group health insurance premiums shall be made only under the conditions specified in this subsection and in MCSR 7108.1 and remain entirely at AHS's discretion. Such payment of premiums shall not be considered an entitlement for any individual. (b) As a condition of continuing eligibility, an individual may be required to remain enrolled in an individual health insurance plan, provided that they are enrolled in a plan for which the state has been paying the premiums on a continuous basis since July 2000. (c) For the purposes of this subsection and MCSR 7108.1, a group health insurance plan is a plan that meets the definition of a group health insurance plan specified in 8 V.S.A. § 4079. An individual health insurance plan is a plan that does not meet that definition.
19.00 Incarceration and QHP eligibility (10/01/2013, 13-12F)	
19.01 In general[18] (10/01/2013, 13-12F)	
	An incarcerated individual, other than an individual who is incarcerated pending the disposition of charges, is ineligible for enrollment in a QHP.

[18] 26 CFR § 1.36B-2(a)(4); 45 CFR § 155.305(a)(2);

19.02 Exception[19] (10/01/2013, 13-12F)	
	An incarcerated individual may be an applicable tax filer if a family member is eligible to enroll in a QHP.
20.00 Living arrangements for Medicaid eligibility purposes (10/01/2013, 13-12F)	
20.01 In general[20] (10/01/2013, 13-12F)	
	Individuals or couples meet the living-arrangement requirement for Medicaid eligibility purposes if they live in: (a) Their own home; (b) The household of another; or (c) The following public institutions: (1) The Vermont State Hospital (VSH) or successor entity or entities, if the individual is: (i) Under the age of 21 (if a Medicaid enrollee is a patient of VSH upon reaching their 21st birthday, eligibility may be continued to the date of discharge or their 22nd birthday, whichever comes first, upon a finding by the VSH Disability Determination Team that the individual is blind or disabled according to SSI/AABD standards); or (ii) Age 65 or older. (2) An intermediate care facility for people with developmental disabilities (ICF-DD). (3) A facility supported in whole or in part by public funds whose primary purpose is to provide medical care other than the treatment of mental disease, including nursing and convalescent care, inpatient care in a hospital, drug and alcohol treatment, etc. (d) A private facility, if: (1) The primary purpose of the facility is to provide medical care other than the treatment of mental diseases, including nursing and convalescent care, inpatient care in a hospital, drug and alcohol treatment, etc.; and (2) The facility meets the following criteria: (i) There is no agreement or contract obliging the institution to provide

[19] 26 CFR § 1.36B-2(a)(4); See §§ 1312(f)(1)(B) and 1312(f)(3) of the ACA (42 USC § 18032(f)(1)(B) and (f)(3)) and 26 CFR § 1.36B-3(b)(2).

[20] Medicaid Rules 4218 and 4332

	total support to the individual; (ii) There has been no transfer of property to the institution by the individual or on their behalf, unless maintenance by the institution has been of sufficient duration to fully exhaust the individual's equity in the property transferred at a rate equal to the monthly charges to other residents in the institution; and (iii) There is no restriction on the individual's freedom to leave the institution. (3) An individual under the age of 21 or age 65 or older meets the living arrangement requirement if they live at the Brattleboro Retreat. In addition, an individual who is a patient at the facility upon reaching their 21st birthday, has eligibility continued to the date of discharge (or end of ten day notice period, if later) or their 22nd birthday, whichever comes first, as long as they continue to meet all other eligibility requirements.
20.02 Correctional facility (10/01/2013, 13-12F)	
(a) In general[21]	An individual living in a correctional facility, including a juvenile facility, is not eligible for Medicaid.
(b) Determination of incarceration	Incarceration begins on the date of admission and ends when the individual moves out of the correctional facility.
(c) Exception: Transfer to a medical facility[22]	While incarcerated, Medicaid is available when the inmate is an inpatient in a medical institution not under the control of the corrections system. Such institutions include a hospital, nursing facility, juvenile psychiatric facility, or intermediate care facility.
(d) Affect of incarceration on enrollment	Once determined Medicaid eligible, an individual who is incarcerated retains eligibility. However, their case is placed in suspended status during the period of incarceration.
20.03 Determination of residence in an institution (10/01/2013, 13-12F)	
	Residence in an institution is determined by the dates of admission and discharge. An individual at home in the community on a visiting pass is still a resident of the institution.
20.04 Homeless individuals (10/01/2013, 13-12F)	
	A homeless individual is considered to be living in their own home.

[21] 42 CFR §§ 435.1009 and 435.1010.

[22] 42 CFR §§ 435.1009 and 1010. This is also based on various letters from CMS to states, inquiring about the availability of federal funds participation for inmate inpatient health care.

20.05 Financial responsibility and living arrangement (10/01/2013, 13-12F)	
	The financial responsibility of relatives varies depending upon the type of living arrangement.
21.00 Residency (10/01/2013, 13-12F)	
21.01 In general[23] (10/01/2013, 13-12F)	
	AHS will provide health benefits to an eligible Vermont resident.
21.02 Incapability of indicating intent (10/01/2013, 13-12F)	
	For purposes of this section, an individual is considered incapable of indicating intent regarding residency if the individual: (a) Has an I.Q. of 49 or less or has a mental age of 7 years or less, based on tests acceptable to AHS; (b) Is judged legally incompetent; or (c) Is found incapable of indicating intent based on medical documentation obtained from a physician, psychologist, or other person licensed by the state in the field of intellectual disabilities.
21.03 Who is a state resident (10/01/2013, 13-12F)	
	A resident of the state is any individual who: (a) Meets the conditions in §§ 21.04 through 21.08; or (b) Meets the criteria specified in an interstate agreement under § 21.10.
21.04 Placement by a state in an out-of-state institution[24] (10/01/2013, 13-12F)	
	(a) Any state agency, including an entity recognized under state law as being under contract with the state for such purposes, that arranges for an individual to be placed in an institution located in another state is recognized as acting on behalf of the state in making a placement. The state arranging or actually making the placement is considered as the individual's state of residence. (b) Any action beyond providing information to the individual and the

[23] 42 CFR § 435.403; 45 CFR § 155.305(a)(3). Note: The Exchange rules speak in terms of residence within the Exchange's "service area." However, as there will be a single "service area" in Vermont, for both Medicaid and QHP enrollment, this rule speaks in terms of residence within the state.

[24] 42 CFR § 435.403(e).

	individual's family would constitute arranging or making a state placement. However, the following actions do not constitute state placement: (1) Providing basic information to individuals about another state's Medicaid program and information about the availability of health care services and facilities in another state. (2) Assisting an individual in locating an institution in another state, provided the individual is capable of indicating intent and independently decides to move. (3) When a competent individual leaves the facility in which the individual is placed by a state, that individual's state of residence for Medicaid purposes is the state where the individual is physically located. (4) Where a placement is initiated by a state because the state lacks a sufficient number of appropriate facilities to provide services to its residents, the state making the placement is the individual's state of residence.
21.05 An individual receiving Aid to the Aged, Blind, and Disabled (AABD)[25] (10/01/2013, 13-12F)	
(a) In general	For an individual of any age who is receiving a state supplemental payment (in Vermont, known as AABD), the state of residence is the state paying the state supplemental payment.
(b) Exception[26]	A transient worker may claim Vermont as their state of residence and be granted Medicaid if they meet all other eligibility criteria. These individuals may be granted Vermont Medicaid even though they continue to receive a state supplement payment from another state.
21.06 An individual age 21 and over[27] (10/01/2013, 13-12F)	
	Except as provided in § 21.05, with respect to individuals age 21 and over: (a) For an individual not residing in an institution, as defined in § 3.00, including a licensed foster care providing food, shelter, and supportive services to one or more persons unrelated to the proprietor, the state of residence is the state where the individual is living and:

[25] Effective January I, I974, the major portion of Vermont's federal-state program of AABD became the federal program of Supplemental Security Income (SSI) through amendment of title XVI of the Social Security Act. SSI guarantees a minimum national standard of assistance to aged, blind or disabled persons at full federal expense. Vermont supplements the SSI payment with a state-funded payment. While, federal government abandoned the AABD program title, Vermont has retained this name for this state supplementary payment. See, AABD Rule 2700.

[26] Former Medicaid Rule 4217(A).

[27] 42 CFR § 435.403(h); 45 CFR § 155.305(a)(3)(i) and (iii).

	(1) Intends to reside, including without a fixed address; or (2) Has entered the state with a job commitment or is seeking employment (whether or not currently employed). (b) For an individual not residing in an institution, as described in (a) of this subsection, who is incapable of stating intent, the state of residence is the state where the individual is living. (c) For any institutionalized individual who became incapable of indicating intent before age 21, the state of residence is: (1) That of the parent applying for Medicaid on the individual's behalf, if the parents reside in separate states (if a legal guardian has been appointed and parental rights are terminated, the state of residence of the guardian is used instead of the parent's); (2) The parent's or legal guardian's state of residence at the time of placement (if a legal guardian has been appointed and parental rights are terminated, the state of residence of the guardian is used instead of the parent's); (3) The current state of residence of the parent or legal guardian who files the application if the individual is institutionalized in that state (if a legal guardian has been appointed and parental rights are terminated, the state of residence of the guardian is used instead of the parent's); or (4) The state of residence of the person or party who files an application is used if the individual has been abandoned by his or her parent(s), does not have a legal guardian and is institutionalized in that state. (d) For any institutionalized individual who became incapable of indicating intent at or after age 21, the state of residence is the state in which the individual is physically present, except where another state makes a placement. (e) For any other institutionalized individual, the state of residence is the state where the individual is living and intends to reside. An institutionalized individual cannot be considered a Vermont resident if the individual owns a home (see § 29.08(a)(1)) in another state which the individual intends to return to, even if the likelihood of return is apparently nil.[28]
21.07 An individual receiving Title IV-E payments[29] (10/01/2013, 13-12F)	
	For an individual of any age who is receiving federal payments for foster care or adoption assistance under Title IV-E of the Act, the state of residence is the state where the individual lives.

[28] Former Medicaid Rule 4217(F).

[29] 42 CFR § 403(g); 45 CFR § 155.305(a)(3)(iii).

21.08 An individual under age 21[30] (10/01/2013, 13-12F)	
	For an individual under age 21 who is not eligible for Medicaid based on receipt of assistance under Title IV-E of the Act, as addressed in § 21.07, and is not receiving a state supplementary payment, as addressed in § 21.05, the state of residence is as follows: (a) For an individual who is capable of indicating intent and who is emancipated from his or her parent or who is married, the state of residence is determined in accordance with § 21.06(a). (b) For an individual not described in paragraph (a) of this subsection, not living in an institution, not eligible for Medicaid based on receipt of assistance under Title IV-E of the Act, and not receiving a state supplementary payment, the state of residence is: (1) The state where the individual resides, including without a fixed address; or (2) The state of residency of the parent or caretaker, in accordance with § 21.06(a), with whom the individual resides. (c) For any institutionalized individual who is neither married nor emancipated, the state of residence is: (1) The parent's or legal guardian's state of residence at the time of placement (if a legal guardian has been appointed and parental rights are terminated, the state of residence of the guardian is used instead of the parent's); or (2) The current state of residence of the parent or legal guardian who files the application if the individual is institutionalized in that state (if a legal guardian has been appointed and parental rights are terminated, the state or residence of the guardian is used instead of the parent's).
21.09 Specific prohibitions[31] (10/01/2013, 13-12F)	
	AHS will not: (a) Deny health-benefits eligibility because an individual has not resided in Vermont for a specified period. (b) Deny health-benefits eligibility to an individual in an institution, who satisfies the residency rules set forth in this section, on the grounds that the individual did not establish residence in Vermont before entering the

[30] 42 CFR § 435.403(i); 45 CFR § 155.305(a)(3)(ii)and (iii). Paragraphs (a) and (b) are derived from what was formerly 42 CFR § 435.403(h). Subparagraphs (1) and (2) are new. Paragraph (c) was originally designated as 42 CFR § 435.403(h)(4).

[31] 42 CFR § 435.403(j).

	institution. (c) Deny or terminate a Vermont resident's health-benefits eligibility because of that person's temporary absence from the state, as defined in § 21.13, if the person intends to return to Vermont when the purpose of the absence has been accomplished, unless another state has determined that the person is a resident there for purposes of health benefits.
21.10 Interstate agreements[32] (10/01/2013, 13-12F)	
	A state may have a written agreement with another state setting forth rules and procedures resolving cases of disputed residency. These agreements may establish criteria other than those specified in §§ 21.07 and 21.08, but must not include criteria that result in loss of residency in both states or that are prohibited by § 21.09. The agreements must contain a procedure for providing health benefits to individuals pending resolution of the case. States may use interstate agreements for purposes other than cases of disputed residency to facilitate administration of the program, and to facilitate the placement and adoption of a Title IV-E individual when the child and his or her adoptive parent(s) move into another state.
21.11 Cases of disputed residency[33] (10/01/2013, 13-12F)	
	If Vermont and any other state cannot resolve which state is the individual's state of residence, the state where the individual is physically located is the state of residence.
21.12 Special rule for tax households with members in multiple Exchange service areas[34] (10/01/2013, 13-12F)	
	(a) Except as specified in paragraph (b) of this subsection, if all of the members of a tax household are not within the same Exchange service area, in accordance with the applicable standards in §§ 21.04 through 21.08, any member of the tax household may enroll in a QHP through any of the Exchanges for which one of the tax filers meets the residency standard. (b) If both spouses in a tax household enroll in a QHP through VHC, a tax dependent may only enroll in a QHP through VHC, or through the Exchange that services the area in which the dependent meets a residency standard described in §§ 21.04 through 21.08.
21.13 Temporary absences from the state[35] (10/01/2013, 13-12F)	

[32] 42 CFR § 435.403(k); 45 CFR § 155.305(a)(3)(iii).

[33] 42 CFR § 435.403(m); 45 CFR § 155.305(a)(3)(iii).

[34] 45 CFR § 155.305(a)(3)(iv).

[35] 45 CFR § 155.305(a)(3)(v) (NPRM, 78 FR 4593).

(a) In general	Temporary absences from Vermont do not interrupt or end Vermont residence.
(b) Definition	An absence is temporary if the individual leaves the state with the intent to return when the purpose of the absence has been accomplished. Examples include, but are not limited to, absences for the purposes of: (1) Visiting; (2) Obtaining necessary medical care; (3) Obtaining education or training under a program of Vocational Rehabilitation, Work Incentive, or higher education program; or (4) Residence in a long-term care facility in another state, if arranged by an agent of the State of Vermont, unless the individual or their parents or legal guardian, as applicable, state intent to abandon Vermont residence and to reside outside Vermont upon discharge from long-term care.
(c) Exception	An absence is not temporary if another state or Exchange verifies that the individual meets the residency standard of such other state or Exchange.
21.14 Vermont residence as Medicaid payment requirement (10/01/2013, 13-12F)	
	An individual must be a resident of Vermont at the time a medical service is rendered in order for Vermont Medicaid to pay for that service. The service, however, does not have to be rendered in Vermont subject to certain restrictions.[36]
22.00 Pursuit of potential unearned income for Medicaid eligibility[37] (10/01/2013, 13-12F)	
	(a) As a condition of eligibility for Medicaid, an individual is required to take all necessary steps to obtain any annuities, pensions, retirement, or disability benefits 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, OASDI benefits, railroad retirement benefits, and unemployment compensation. Application for these benefits, when appropriate, must be verified prior to granting or continuing Medicaid. (b) Individuals are not required to apply for Medicare part B or for cash assistance programs such as SSI/AABD or Reach Up as a condition of eligibility for Medicaid.
23.00 Minimum essential coverage (10/01/2013, 13-12F)	

[36] 42 CFR § 431.52.

[37] Former Medicaid Rule 4137.

23.01 Minimum essential coverage (10/01/2013, 13-12F)	
(a) In general[38]	Minimum essential coverage means coverage under any of the following: Government-sponsored programs, eligible employer-sponsored plans, grandfathered health plans, individual health plans and certain other health-benefits coverage. Individuals and their tax dependents must have minimum essential coverage (MEC) to avoid the shared responsibility payment (penalty) imposed by the Internal Revenue Service, unless they have received a certificate of exemption as described in § 14.00(b). In addition, individuals who are eligible to enroll in health coverage that qualifies as MEC are not eligible to receive federal tax credits and cost-sharing reductions if they enroll in a QHP. To be considered as MEC, an employer-sponsored plan must be affordable and meet minimum value criteria (see §§ 23.02 and 23.03). See §§ 55.02(c) and (d) for descriptions of the process for verifying eligibility for MEC.
(b) Government-sponsored MEC	
(1) In general[39]	Subject to the limitation in paragraph (b)(2), an individual is eligible for government-sponsored MEC if, as of the first day of the first full month the individual may receive benefits under the program, the individual meets the criteria for coverage under one of the following government-sponsored programs: (i) The Medicare program under part A of Title XVIII of the Act; (ii) The Medicaid program under Title XIX of the Act; (iii) The CHIP program under Title XXI of the Act; (iv) Medical coverage under chapter 55 of Title 10, United States Code, including coverage under the TRICARE program; (v) A health care program under chapter 17 or 18 of Title 38, United States Code, as determined by the Secretary of Veterans Affairs, in coordination with the Secretary of HHS and the Secretary of the Treasury; (vi) A health plan under § 2504(e) of Title 22, United States Code (relating to Peace Corps volunteers); or (vii) The Nonappropriated Fund Health Benefits Program of the Department of Defense, established under § 349 of the National

[38] 26 USC § 5000A(f); 26 CFR § 1.36B-2(c).

[39] 26 USC § 5000A(f)(1)(A); 26 CFR § 1.36B-2(c)(2)(i)

	Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 USC § 1587 note).
(2) Obligation to complete administrative requirements to obtain coverage[40]	An individual who meets the eligibility criteria for government-sponsored MEC must complete the requirements necessary to receive benefits. An individual who fails by the last day of the third full calendar month following the event that establishes eligibility under (b)(1) of this subsection to complete the requirements to obtain government-sponsored MEC (other than a veteran's health-care program) is treated as eligible for government-sponsored MEC as of the first day of the fourth calendar month following the event that establishes eligibility.
(3) Special rule for coverage for veterans and other individuals under chapter 17 or 18 of Title 38, USC §[41]	An individual is eligible for MEC under a health-care program under chapter 17 or 18 of Title 38, USC section only if the individual is enrolled in a health-care program under chapter 17 or 18 of Title 38, USC section identified as MEC in regulations issued under § 5000A of the Code.
(4) Retroactive effect of eligibility determination[42]	If an individual receiving APTC is determined to be eligible for government-sponsored MEC that is effective retroactively (such as Medicaid), the individual is treated as eligible for MEC under that program no earlier than the first day of the first calendar month beginning after the approval.
(5) Determination of Medicaid or CHIP ineligibility[43]	An individual is treated as not eligible for Medicaid or a similar program for a period of coverage under a QHP if, when the individual enrolls in the QHP, the individual is determined to be not eligible for Medicaid.
(6) Examples[44]	The following examples illustrate the provisions of this paragraph (b):
(i) Example 1. Delay in coverage effectiveness	On April 10, 2015, Tax filer D applies for coverage under a government-sponsored health-care program. D's application is approved on July 12, 2015, but her coverage is not effective until September 1, 2015. Under paragraph (b)(1), D is eligible for government-sponsored MEC on September 1, 2015.
(ii) Example 2. Time of eligibility	Tax filer E turns 65 on June 3, 2015, and becomes eligible for Medicare. Under § 5000A(f)(1)(A)(i), Medicare is MEC. However, E must enroll in Medicare to receive benefits. E enrolls in Medicare in September, which is the last month of E's initial enrollment period. Thus, E may receive Medicare benefits on December 1, 2015. Because E completed the requirements necessary to receive

[40] 26 CFR § 1.36B-2(c)(2)(ii).

[41] 26 CFR § 1.36B-2(c)(2)(iii).

[42] 26 CFR § 1.36B-2(c)(2)(iv).

[43] 26 CFR § 1.36B-2(c)(2)(v). The phrase in this section: "or considers (within the meaning of 45 CFR § 155.302(b))" was omitted from this paragraph, as AHS does not conduct "assessment[s] of eligibility for Medicaid and CHIP" within the meaning of 45 CFR § 155.302(b), but rather, determines eligibility for such programs.

[44] These examples are extracted from 26 CFR § 1.36-2(c)(2)(vi).

	Medicare benefits by the last day of the third full calendar month after the event that establishes E's eligibility (E turning 65), under paragraph (b)(1) and (b)(2) of this subsection, E is eligible for government-sponsored MEC on December 1, 2015, the first day of the first full month that E may receive benefits under the program.
(iii) Example 3. Time of eligibility, individual fails to complete necessary requirements	The facts are the same as in Example 2, except that E fails to enroll in the Medicare coverage during E's initial enrollment period. E is treated as eligible for government-sponsored MEC under paragraph (b)(2) of this subsection as of October 1, 2015, the first day of the fourth month following the event that establishes E's eligibility (E turning 65).
(iv) Example 4. Retroactive effect of eligibility	In November 2014, Tax filer F enrolls in a QHP for 2015 and receives APTCs. F loses her part-time employment and on April 10, 2015, applies for coverage under the Medicaid program. F's application is approved on May 15, 2015, and her Medicaid coverage is effective as of April 1, 2015. Under paragraph (b)(4), F is eligible for government-sponsored MEC on June 1, 2015, the first day of the first calendar month after approval.
(v) Example 5. Determination of Medicaid ineligibility	In November 2014, Tax filer G applies to enroll in health coverage for 2015. AHS determines that G is not eligible for Medicaid and estimates that G's household income will be 140 percent of the FPL for G's family size for purposes of determining APTCs. G enrolls in a QHP and begins receiving APTCs. G experiences a reduction in household income during the year and his household income for 2015 is 130 percent of the FPL (within the Medicaid income threshold). However, under paragraph (b)(5), G is treated as not eligible for Medicaid for 2015.
(vi) Example 6. Mid-year Medicaid eligibility redetermination	The facts are the same as in Example 5, except that G returns to the Exchange in July 2015 and AHS determines that G is eligible for Medicaid. AHS approves G for coverage and AHS discontinues G's APTCs effective August 1. Under paragraphs (b)(4) and (b)(5), G is treated as not eligible for Medicaid for the months when G is covered by a QHP. G is eligible for government-sponsored MEC for the months after G is approved for Medicaid and can receive benefits, August through December 2015.
(c) Employer-sponsored MEC	
(1) In general[45]	An employee who may enroll in an eligible employer-sponsored plan and an individual who may enroll in the plan because of a relationship to the employee (a related individual) are eligible for MEC under the plan for any month only if the plan is affordable (§ 23.02) and provides minimum value (§ 23.03). Government-sponsored programs described in paragraph (b) of this subsection are not eligible employer-sponsored plans.
(2) Plan year[46]	For purposes of this paragraph, a plan year is an eligible employer-sponsored plan's regular 12-month coverage period (or the remainder of a 12-month coverage period for a new employee or an individual who enrolls during a special enrollment period). A plan year may also mean fewer than 12 calendar months

[45] 26 CFR § 1.36B-2(c)(3)(i).

[46] 26 CFR § 1.36B-2(c)(3)(ii).

	in 2014 if the employer's plan year is shortened in order to end on December 31, 2014.
(3) Eligibility for months during a plan year	
(i) Failure to enroll in plan[47]	An employee or related individual may be eligible for MEC under an eligible employer-sponsored plan for a month during a plan year if the employee or related individual could have enrolled in the plan for that month during an open or special enrollment period.
(ii) Waiting periods[48]	An employee or related individual is not eligible for MEC under an eligible employer-sponsored plan during a required waiting period before the coverage becomes effective.
(iii) Example[49]	The following example illustrates the provisions of this paragraph (c)(3): (A) Tax filer B is an employee of Employer X. X offers its employees a health insurance plan that has a plan year (within the meaning of paragraph (c)(2)) from October 1 through September 30. Employees may enroll during an open season from August 1 to September 15. B does not enroll in X's plan for the plan year October 1, 2014, to September 30, 2015. In November 2014, B enrolls in a QHP for calendar year 2015. (B) B could have enrolled in X's plan during the August 1 to September 15 enrollment period. Therefore, unless X's plan is not affordable for B or does not provide minimum value, B is eligible for MEC under X's plan for the months that B is enrolled in the QHP during X's plan year (January through September 2015).
(4) Continuation coverage[50]	An individual who may enroll in continuation coverage required under federal law or a state law that provides comparable continuation coverage is eligible for MEC only for months that the individual is enrolled in the coverage.
23.02 Affordable coverage for employer-sponsored MEC (10/01/2013, 13-12F)	
(a) In general	
(1) Affordability for employee[51]	Except as provided in paragraph (a)(3) of this subsection, an eligible employer-sponsored plan is affordable for an employee if the portion of the annual premium the employee must pay, whether by salary reduction or otherwise

[47] 26 CFR § 1.36B-2(c)(3)(iii)(A).

[48] 26 CFR § 1.36B-2(c)(3)(iii)(B).

[49] 26 CFR § 1.36B-2(c)(3)(iii)(C).

[50] 26 CFR § 1.36-2(c)(3)(iv).

[51] 26 CFR § 1.36-2(c)(3)(v)(A)(1).

	(required contribution), for self-only coverage does not exceed the required contribution percentage (as defined in paragraph (c)) of the applicable tax filer's household income for the benefit year.
(2) Affordability for related individual[52]	Except as provided in paragraph (a)(3) of this subsection, an eligible employer-sponsored plan is affordable for a related individual if the portion of the annual premium the employee must pay for self-only coverage does not exceed the required contribution percentage, as described in (a)(1) of this subsection.
(3) Employee safe harbor[53]	(i) An employer-sponsored plan is not affordable for an employee or a related individual for a plan year if, when the employee or a related individual enrolls in a QHP for a period coinciding with the plan year (in whole or in part), it is determined that the eligible employer-sponsored plan is not affordable for that plan year. (ii) This paragraph does not apply to a determination made as part of the redetermination process described in § 75.00 unless the individual receiving a redetermination notification affirmatively responds and provides current information on affordability. (iii) This paragraph does not apply for an individual who, with reckless disregard for the facts, provides incorrect information concerning the portion of the annual premium for coverage for the employee or related individual under the plan.
(4) Wellness incentives and employer contributions to health reimbursement arrangements[54]	Federal rules do not now provide guidance as to how wellness incentives and amounts made available under a health reimbursement arrangement are treated in determining the affordability of eligible employer-sponsored coverage under this paragraph. However, the IRS has indicated that the Commissioner may provide such guidance at a future point in time.
(b) Affordability for part-year period[55]	Affordability under paragraph (a)(1) of this subsection is determined separately for each employment period that is less than a full calendar year or for the portions of an employer's plan year that fall in different benefit years of an applicable tax filer (a part-year period). An eligible employer-sponsored plan is affordable for a part-year period if the employee's annualized required contribution for self-only coverage under the plan for the part-year period does not exceed the required contribution percentage of the applicable tax filer's household income for the benefit year. The employee's annualized required contribution is the employee's required contribution for the part-year period times a fraction, the denominator of which is 12 and the numerator of which is the number of months in the part-year period during the applicable tax filer's benefit year. Only full calendar months are included in the computation under this paragraph.

[52] 26 CFR § 1.36-2(c)(3)(v)(A)(2).

[53] 26 CFR § 1.36-2(c)(3)(v)(A)(3).

[54] 26 CFR § 1.36-2(c)(3)(v)(A)(4).

[55] 26 CFR § 1.36-2(c)(3)(v)(B).

(c) Required contribution percentage[56]	The required contribution percentage is 9.5 percent. The percentage may be adjusted in published federal guidance for benefit years beginning after December 31, 2014, to reflect rates of premium growth relative to growth in income and, for benefit years beginning after December 31, 2018, to reflect rates of premium growth relative to growth in the consumer price index.
(d) Examples[57]	The following examples illustrate the provisions of § 23.02. Unless stated otherwise, in each example the tax filer is single and has no tax dependents, the employer's plan is an eligible employer-sponsored plan and provides minimum value, the employee is not eligible for other MEC, and the tax filer, related individual, and employer-sponsored plan have a calendar benefit year:
(1) Example 1. Basic determination of affordability	In 2014 Tax filer C has household income of $47,000. C is an employee of Employer X, which offers its employees a health insurance plan that requires C to contribute $3,450 for self-only coverage for 2014 (7.3 percent of C's household income). Because C's required contribution for self-only coverage does not exceed 9.5 percent of household income, under paragraph (a)(1), X's plan is affordable for C, and C is eligible for MEC for all months in 2014.
(2) Example 2. Basic determination of affordability for a related individual	The facts are the same as in Example 1, except that C is married to J and X's plan requires C to contribute $5,300 for coverage for C and J for 2014 (11.3 percent of C's household income). Because C's required contribution for self-only coverage ($3,450) does not exceed 9.5 percent of household income, under paragraph (a)(2) of this subsection, X's plan is affordable for C and J, and C and J are eligible for minimum essential coverage for all months in 2014.
(3) Example 3. Determination of unaffordability at enrollment	(i) Tax filer D is an employee of Employer X. In November 2013 AHS projects that D's 2014 household income will be $37,000. It also verifies that D's required contribution for self-only coverage under X's health insurance plan will be $3,700 (10 percent of household income). Consequently, AHS determines that X's plan is unaffordable. D enrolls in a QHP and not in X's plan. In December 2014, X pays D a $2,500 bonus. Thus, D's actual 2014 household income is $39,500 and D's required contribution for coverage under X's plan is 9.4 percent of D's household income. (ii) Based on D's actual 2014 household income, D's required contribution does not exceed 9.5 percent of household income and X's health plan is affordable for D. However, when D enrolled in a QHP for 2014, AHS determined that X's plan was not affordable for D for 2014. Consequently, under paragraph (a)(3), X's plan is not affordable for D and D is not eligible for MEC under X's plan for 2014.
(4) Example 4. Determination of unaffordability for plan year	The facts are the same as in Example 3, except that X's employee health insurance plan year is September 1 to August 31. AHS determines in August 2014 that X's plan is unaffordable for D based on D's projected household income for 2014. D enrolls in a QHP as of September 1, 2014. Under paragraph (a)(3), X's plan is not affordable for D and D is not eligible for MEC under X's plan for the coverage months September to December 2014 and January

[56] 26 CFR § 1.36-2(c)(3)(v)(C).

[57] 26 CFR § 1.36-2(c)(3)(v)(D).

		through August 2015.
(5)	Example 5. No affordability information affirmatively provided for annual redetermination.	(i) The facts are the same as in Example 3, except AHS redetermines D's eligibility for APTCs for 2015. D does not affirmatively provide AHS with current information regarding affordability and AHS determines that D's coverage is not affordable for 2015 and approves APTCs based on information from the previous enrollment period. In 2015, D's required contribution for coverage under X's plan is 9.4 percent of D's household income. (ii) Because D does not respond to AHS's notification and AHS makes an affordability determination based on information from an earlier year, the employee safe harbor in paragraph (a)(3) does not apply. D's required contribution for 2015 does not exceed 9.5 percent of D's household income. Thus, X's plan is affordable for D for 2015 and D is eligible for MEC for all months in 2015.
(6)	Example 6. Determination of unaffordability for part of plan year (part-year period)	(i) Tax filer E is an employee of Employer X beginning in May 2015. X's employee health insurance plan year is September 1 to August 31. E's required contribution for self-only coverage for May through August is $150 per month ($1,800 for the full plan year). AHS projects E's household income for purposes of eligibility for APTCs as $18,000. E's actual household income for the 2015 benefit year is $20,000. (ii) Under paragraph (b) of this subsection, whether coverage under X's plan is affordable for E is determined for the remainder of X's plan year (May through August). E's required contribution for a full plan year ($1,800) exceeds 9.5 percent of E's household income (1,800/18,000 = 10 percent). Therefore, AHS determines that X's coverage is unaffordable for May through August. Although E's actual household income for 2015 is $20,000 (and E's required contribution of $1,800 does not exceed 9.5 percent of E's household income), under paragraph (a)(3), X's plan is unaffordable for E for the part of the plan year May through August 2015. Consequently, E is not eligible for MEC under X's plan for the period May through August 2015.
(7)	Example 7. Affordability determined for part of a benefit year (part-year period)	(i) Tax filer F is an employee of Employer X. X's employee health insurance plan year is September 1 to August 31. F's required contribution for self-only coverage for the period September 2014 through August 2015 is $150 per month or $1,800 for the plan year. F does not enroll in X's plan during X's open season but enrolls in a QHP for September through December 2014. F does not request APTCs and does not ask AHS to determine whether X's coverage is affordable for F. F's household income in 2014 is $18,000. (ii) Because F is a calendar year tax filer and Employer X's plan is not a calendar year plan, F must determine the affordability of X's coverage for the part-year period in 2014 (September-December) under paragraph (b) of this subsection. F determines the affordability of X's plan for the September through December 2014 period by comparing the annual premiums ($1,800) to F's 2014 household income. F's required contribution of $1,800 is 10 percent of F's 2014 household

	income. Because F's required contribution exceeds 9.5 percent of F's 2014 household income, X's plan is not affordable for F for the part-year period September through December 2014 and F is not eligible for MEC under X's plan for that period. (iii) F enrolls in coverage for 2015 and does not ask AHS to approve APTCs or determine whether X's coverage is affordable. F's 2015 household income is $20,000. (iv) F must determine if X's plan is affordable for the part-year period January 2015 through August 2015. F's annual required contribution ($1,800) is 9 percent of F's 2015 household income. Because F's required contribution does not exceed 9.5 percent of F's 2015 household income, X's plan is affordable for F for the part-year period January through August 2015 and F is eligible for MEC for that period.
(8) Example 8. Coverage unaffordable at year end	Tax filer G is employed by Employer X. In November 2014, AHS determines that G is eligible for affordable employer-sponsored coverage for 2015. G nonetheless enrolls in a QHP for 2015 but does not receive APTC. G's 2015 household income is less than expected and G's required contribution for employer-sponsored coverage for 2015 exceeds 9.5 percent of G's actual 2015 household income. Under paragraph (a)(1) of this subsection, G is not eligible for MEC under X's plan for 2015.
23.03 Minimum value for employer-sponsored MEC[58] (10/01/2013, 13-12F)	
	An eligible employer-sponsored plan provides minimum value only if the plan's share of the total allowed costs of benefits provided to the employee under the plan (as determined under guidance issued by the Secretary of HHS under § 1302(d)(2) of the ACA (42 USC § 18022(d)(2))) is at least 60 percent.
23.04 Enrollment in eligible employer-sponsored plan (10/01/2013, 13-12F)	
(a) In general[59]	Except as provided in paragraph (b) of this subsection, the requirements of affordability and minimum value do not apply for months that an individual is enrolled in an eligible employer-sponsored plan.
(b) Automatic enrollment[60]	An employee or related individual is treated as not enrolled in an eligible employer-sponsored plan for a month in a plan year or other period for which the employee or related individual is automatically enrolled if the employee or related individual terminates the coverage before the later of the first day of the second full calendar month of that plan year or other period or the last day of any permissible opt-out period provided by the employer-sponsored plan or in regulations to be issued by the Department of Labor, for that plan year or other

[58] 26 CFR § 1.36-2(c)(3)(vi).

[59] 26 CFR § 1.36-2(c)(3)(vii)(A).

[60] 26 CFR § 1.36-2(c)(3)(vii)(B).

	period.
(c) Examples[61]	The following examples illustrate the provisions of this subsection:
(1) Example 1. Tax filer H is employed by Employer X in 2014.	H's required contribution for self-only employer coverage exceeds 9.5 percent of H's 2014 household income. H enrolls in X's calendar year plan for 2014. Under paragraph (a) of this subsection, H is eligible for MEC for 2014 because H is enrolled in an eligible employer-sponsored plan for 2014.
(2) Example 2. The facts are the same as in Example 1, except that H terminates plan coverage on June 30, 2014.	Under paragraph (a) of this subsection, H is eligible for MEC under X's plan for January through June 2014 but is not eligible for MEC under X's plan for July through December 2014.
(3) Example 3. The facts are the same as in Example 1, except that Employer X automatically enrolls H in the plan for calendar year 2015.	H terminates the coverage on January 20, 2015. Under paragraph (b) of this subsection, H is not eligible for MEC under X's plan for January 2015.
23.05 Related individual not claimed as a personal exemption deduction[62] (10/01/2013, 13-12F)	
	An individual who may enroll in MEC because of a relationship to another person eligible for the coverage, but for whom the other eligible person does not claim a personal exemption deduction, is treated as eligible for MEC under the coverage only for months that the related individual is enrolled in the coverage.

[61] 26 CFR § 1.36-2(c)(3)(vii)(C).

[62] 26 CFR § 1.36-2(c)(4).

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Part Four
Special Rules for MABD for Long-Term Care Services - Eligibility and Post-Eligibility

24.00 Patient share payment for MABD for long-term care services (10/01/13, 13-12F)

24.01 In general (10/01/13, 13-12F)

(a) Definition: patient share[1]

Once AHS determines that an individual is eligible for MABD for long-term care services, it computes how much of their income must be paid to the long-term care provider each month for the cost of their care (this is called the "patient share"). A patient share is computed for an individual in an institution or who qualifies for long-term care services in their home or community-based setting as part of a special income group (§ 8.05) or as medically needy (§ 8.06). An individual's patient share is determined at initial eligibility, eligibility redeterminations, and when changes in circumstances occur.

(b) Computation of patient share

(1) An individual's patient share is determined by computing a maximum patient share and deducting allowable expenses. § 24.03 describes how the maximum patient share is determined. § 24.04 describes allowable deductions from the patient share. The actual patient share payable by the individual is the lesser of:

(i) The balance of the individual's income remaining after computing the patient share; and

(ii) The cost of care remaining after third-party payment.

(2) In cases in which allowable deductions exceed the individual's income, the patient-share payment is reduced by the deductions, sometimes resulting in no patient-share obligation, for as many months needed to exhaust the deductions against the individual's available income. The month when the remaining deductions no longer exceed the individual's income, the balance is the patient share payment for that month. When monthly income and allowable deductions are stable, the patient-share amount remains constant. When income or allowable deductions fluctuate, the patient-share payment is likely to vary.

(c) Patient share payment

An individual owes their patient share by the last day of the month in which they receive the income. Payment is made either to the facility in which the individual resided or to the highest-paid provider of long-term care services. Patient-share amounts and payments to long-term care providers may be adjusted when a patient transitions from one setting to another, as specified in § 24.05.

24.02 Long-term care residence period (10/01/13, 13-12F)

(a) In general

A patient share obligation is assessed in the month of admission to long-term care as long as the individual is expected to need long-term care services for at least 30 consecutive days. If long-term care services are expected to be needed for fewer than 30 consecutive days, no patient share is assessed. Instead, the

[1] 42 CFR §§ 435.725, 435.726 and 435.735

individual's services are covered through MABD other than MABD for long-term care services if the individual meets those eligibility rules.

(b) Duration of the long-term care residence period

(1) Beginning of long-term care residence

(i) In a general hospital setting

A long-term care residence period in a general hospital setting begins with the first day that the utilization review committee finds acute hospital care is no longer medically necessary and skilled nursing care is medically necessary.

(ii) In other long-term care settings

A long-term care residence period in a long-term care setting, other than a general hospital, begins with the first day that the utilization review committee finds medical need for long-term care or the date of admission, whichever is later.

(2) Ending of long-term care residence period

A long-term care residence period ends with the earliest of:

(i) The individual's date of death;

(ii) The date of the individual's discharge from a long-term care living arrangement (as defined in § 30.01); or

(iii) The last day medical need for long-term care is established by the utilization review committee.

(3) Leave of absence or transfer

A long-term care residence period is not ended by a leave of absence from the current setting (see DVHA Rule 7604.1). A long-term care residence period also continues despite transfer from either:

(i) One long-term care setting to another long-term care setting;

(ii) A general hospital setting (where skilled nursing care has been continuously authorized while awaiting transfer) to another long-term care setting; or

(iii) A long-term care setting to a general hospital setting followed by return to the long-term care setting without an intervening residence period in a community living arrangement (as defined in § 30.01).

(4) Percentage of month in long-term care

The percentage of the month an individual is in long-term care is determined using the appropriate table below.

Percentage of Month in Long-Term Care: All months except February

Day of the month admitted to long-term care	Percentage of the month in long-term care	Day of the month admitted to long-term care	Percentage of the month in long-term care	Day of the month admitted to long-term care	Percentage of the month in long-term care

1	100%	11	67%	21	33%
2	97%	12	63%	22	30%
3	93%	13	60%	23	27%
4	90%	14	57%	24	23%
5	87%	15	53%	25	20%
6	83%	16	50%	26	17%
7	80%	17	47%	27	13%
8	77%	18	43%	28	10%
9	73%	19	40%	29	7%
10	70%	20	37%	30-31	3%

Percentage of Month in Long-Term Care: February

Day of the month admitted to long-term care	Percentage of the month in long-term care	Day of the month admitted to long-term care	Percentage of the month in long-term care	Day of the month admitted to long-term care	Percentage of the month in long-term care
1	100%	11	64%	21	29%
2	96%	12	61%	22	25%
3	93%	13	57%	23	21%
4	89%	14	54%	24	18%
5	86%	15	50%	25	14%
6	82%	16	46%	26	11%
7	79%	17	43%	27	7%
8	75%	18	39%	28	4%
9	71%	19	36%	29	0%
10	68%	20	32%		

24.03 Determining maximum patient share (10/01/13 13-12F)

To determine the maximum patient share, the individual's gross income less allowable deductions as specified in § 24.04 is considered. This is the most that an individual enrolled in MABD for long-term care services is obliged to pay toward the cost of their long-term care. If an individual was in long-term care for less than a full month, the maximum patient share is multiplied by the applicable percentage in the table set forth in § 24.02.

24.04 Allowable deductions from patient-share (10/01/13 13-12F)

(a) Income deductions

When determining the actual patient share payable by an individual, the following are deducted from the individual's gross income:

(1) SSI/AABD, AABD only and Reach Up benefit payments still being received when the person first enters long-term care;

(2) SSI/AABD payments intended to be used to maintain the community residence of an individual temporarily (not to exceed 3 months) in an institution;

(3) Austrian Reparation Payments;

(4) German Reparation Payments;

(5) Japanese and Aleutian Restitution Payments;

(6) Payments from the Agent Orange Settlement Fund;

(7) Radiation Exposure Compensation; and

(8) VA payments for aid and attendance paid to a veteran residing in a nursing facility or to the veteran's surviving spouse residing in a nursing facility.

(b) Other deductions

The following items are then deducted from the individual's patient share in the following order:

(1) A personal-needs allowance (PNA) or community-maintenance allowance (CMA) (see paragraph (c) of this subsection);

(2) Home-upkeep expenses, if applicable (see paragraph (d) of this subsection);

(3) Allocations to a community spouse or maintenance needs of family members living in the community, if applicable (see paragraph (e) of this subsection); and

(4) Reasonable medical expenses incurred, if applicable (see §§ 30.05 and 30.06). For the purposes of this paragraph (b)(4), "reasonable medical expenses" do not include long-term care received during penalty periods for MABD for long-term care services.

(5) NOTE: Unpaid patient-share obligations may not be used to reduce a current patient share obligation.

(c) Personal-needs allowance and community-maintenance allowance

A reasonable amount for clothing and other personal needs of an individual is deducted from their monthly income, as follows:

(1) For an individual enrolled in MABD for long-term care services in an institutional setting, a standard personal needs deduction (PNA) is applied.

(2) For an individual enrolled in MABD for long-term care services in their home or community-based setting, a standard community maintenance

deduction (CMA) is applied. (NOTE: Unlike the individual in the institutional setting whose room and board is covered by Medicaid, an individual receiving long-term care services in their home or community-based setting has a higher deduction to provide a reasonable amount for food, shelter, and clothing to meet their personal needs.)

(d) Home-upkeep deduction

(1) Expenses from the monthly income of an individual enrolled in MABD for long-term care services in an institution or receiving enhanced residential care (ERC) services in a residential care home are deducted to help maintain their owned or rented home in the community. This deduction is allowed for six months. It is available for each separate admission to long-term care, as long as the criteria listed below are met. The home-upkeep standard deduction is three-fourths of the SSI/AABD payment level for a single individual living in the community.

(2) The home-upkeep deduction is granted when the individual has income equal to or greater than the standard home-upkeep deduction and greater than their PNA. An individual who has less income than the standard home-upkeep deduction may deduct an amount for home upkeep equal to the difference between the individual's income and the PNA.

(i) The home-upkeep deduction may be applied at any point during the individual's institutionalization or receipt of ERC services, as the case may be, as long as both of the following criteria for the deduction are met:

(A) No one resides in the individual's home and receives an allocation as a community spouse or other eligible family member; and

(B) The individual submits a doctor's statement before the six-month deduction period, stating that the individual is expected to be discharged from the institution or ERC setting within six months and to return home immediately after discharge.

(ii) If the situation changes during the period the individual is receiving the home-upkeep deduction, the individual's eligibility for the deduction is redetermined. The deduction is denied or ended when:

(A) The individual's home is sold or rented;

(B) The rented quarters of the individual are given up; or

(C) The individual's health requires the long-term care admission period to last longer than six months.

(e) Allocations to family members

(1) In general

An individual is allowed to allocate their income to certain family members as described in this paragraph.

(i) Allocation to

(A) If an individual receiving MABD for long-term care services (the institutionalized spouse) has a spouse living in the community (the

community spouse

community spouse), an allocation may be deducted from the institutionalized spouse's income for the needs of the community spouse. The term "community spouse" applies to the spouse of the institutionalized spouse even if the community spouse is also receiving MABD for long-term care services in their home or community-based setting. When one spouse is receiving MABD for long-term care services in an institutional setting and the other is receiving MABD for long-term care services in their home or community-based setting, the spouse receiving home or community-based services may receive an allocation. When both spouses are receiving home or community-based services, either may allocate to the other.

(B) "Assisted living" is considered a community setting and not an institutional setting provided that assisted living does not include 24-hour care, has privacy, a lockable door, and is a homelike setting. If the spouse of an institutionalized spouse is living in an assisted living setting, they are considered a community spouse for purposes of the community spouse income allocation.

(C) An institutionalized spouse may allocate less than the full amount of the allocation to their community spouse or may allocate nothing. The allocation is reduced by the gross income, if any, of the community spouse. A community spouse, as well as an institutionalized spouse, has a right to request a fair hearing on the amount of the allocation.

(D) The standard community spouse income allocation equals 150 percent of the FPL for two. The actual community spouse income allocation equals the standard allocation plus any amount by which actual shelter expenses of the community spouse exceed the standard allocation, up to a maximum amount. The maximum community spouse income allocation equals a maximum provided by the federal government each year by November 1st.

(E) The presumptions set forth below are applied to the ownership interests in income when determining a community spouse's community spouse income allocation unless the institutionalized spouse establishes by a preponderance of the evidence that the ownership interests are other than as presumed.

(I) Income paid in the name of one spouse is presumed available only to the named spouse.

(II) Income paid in the name of both spouses is presumed available in equal shares to each spouse.

(III) Income paid in the name of either spouse and any other person is presumed available to that spouse in proportion to their ownership interest.

(IV) Income paid in the name of both spouses and any other person is presumed available to each spouse in an amount of one-half of the joint interest.

(ii) Allocation to other

A deduction from the individual's income is allowed for the following family members unless the countable resources of any such family member exceed

family members $12,000:

(A) Any child of either the individual or the individual's spouse under age 18; and

(B) Any dependent child, parent, or sibling of either the individual or the individual's spouse, as specified in (C) or (D) below. For the purposes of this paragraph, a family member is considered dependent if they meet each of the following three criteria:

(I) They have been or will be a member of the household of the individual or their spouse for at least one year;

(II) More than one half of their total support is provided by the individual or the individual's spouse; and

(III) They have gross annual income below $2,500 or are a child of the individual (or spouse) under age 19 or under age 24 and a full-time student during any five months of the tax year.

(C) *Family members living with the community spouse.* When family members live with the community spouse of the individual receiving MABD for long-term care services and living in an institution, the deduction equals the maintenance income standard reduced by the gross income of each family member and divided by three. The resulting amount is the maximum allocation that may be made to each family member.

(D) *Family members not living with the community spouse.* When family members do not live with the community spouse of the individual receiving MABD for long-term care services and living in an institution, the deduction equals the applicable PIL for the number of family members living in the same household, reduced by the gross income, if any, of the family members in the household.

(E) NOTE: The family members described above may be required to apply for SSI, AABD or Reach Up, as long as this would not disadvantage them financially.

24.05 Transfer between settings (10/01/13 13-12F)

(a) In general

An individual receiving long-term care sometimes moves from one setting to another, such as from one nursing facility to another or from a nursing facility to a hospital and back to the same or another nursing facility. The patient share must be paid toward the cost of the individual's care from income received by the individual during each month of a continuous period of receiving MABD for long-term care services. As a general rule, the provider giving long-term care services to the individual on the last day of the preceding month sends the individual a bill for the individual's share of the cost for that month. Payment is made to an institution if the individual was receiving MABD for long-term care services in the institution on the last day of the preceding month. Payment is made to the highest-paid provider of long-term care services if the individual was receiving MABD for long-term care services in their home or community-based setting on the last day of the preceding month. If payment of a patient share results in a credit to the provider, then the provider sends the excess to DVHA. Exceptions to this rule are specified in the paragraphs below.

(b) Hospital admission from nursing facility

An individual receiving MABD for long-term care services who is hospitalized remains enrolled in MABD for long-term care services, and their patient share amount is not redetermined. Payment of the patient share is allocated to the providers as follows:

(1) Acute care

The patient share is paid directly to DVHA when the individual is hospitalized and receiving acute hospital care on the last day of the month preceding the month in which income is received. Failure to pay the patient share may result in closure of the individual's MABD for long-term care services eligibility.

(2) Long-term care

The patient share is paid to the hospital when the individual is hospitalized and receiving MABD for long-term care services in the hospital on the last day of the month preceding the month in which income is received.

(c) Transfer from waiver services to nursing facility

(1) Respite services

The patient share amount is not adjusted when an individual receiving MABD for long-term care services in their home or community-based setting enters an institution for respite services. The patient share is paid to the highest-paid provider of the long-term care services, even if the individual is in an institution on the last day of the month.

(2) Other services

AHS adjusts the patient share amount when an individual receiving MABD for long-term care services in their home or community-based settingenters an institution for services other than respite services and has been in the institution for a full calendar month. The patient share is paid to the institution since the individual was receiving MABD for long-term care services in an institution on the last day of the month.

(d) Discharge from nursing facility to waiver services

The patient share amount is adjusted when an individual is in an institution for more than one full calendar month and discharged to their home or community-based setting. After the patient-share amount is redetermined using the community maintenance allowance (see § 24.04(c)), the first month's patient share is paid to the institution because the individual resided in the institution on the last day of the previous month. Thereafter, the patient share it is paid to the highest paid provider.

(e) Discharge from long-term care

All income an individual receiving MABD for long-term care services receives during the month they are discharged from long-term care and any month after discharge when the individual leaves a long-term care living arrangement (see § 30.01) is excluded. A long-term care provider must refund any patient-share payment made by an individual when the individual pays their patient share from income received in the month of their discharge.

(f) Termination of eligibility for long-term care

An individual receiving MABD for long-term care services becomes fully responsible for the total cost of any care they receive when they remain institutionalized after a medical-review team decision that they no longer need skilled nursing or intermediate care, or they become ineligible for other reasons. The individual's responsibility begins after the effective date of the review team's decision. An individual usually must pay in advance for such care as a privately-paying patient. They incur no patient share obligation for the calendar month that the review team's decision takes effect. A long-term care provider must credit payment toward the cost of private care furnished after the effective date of the review team's decision to end MABD for long-term care services when an individual receiving MABD for long-term care services has already paid their patient

share to the provider during the calendar month the review team's decision takes effect.

(g) Patient share in the month of death

Income received during the calendar month of the death of an individual receiving MABD for long-term care services is counted and applied to the cost of the care the individual received during the prior month. For example, if the individual dies on June 26th, the patient-share payment from income they received during June is due for care provided in May. If the individual dies on July 1st, the patient-share payment from income they received during July is due for care provided in June.

25.00 Income or resource transfers and MABD for long-term care services eligibility (10/01/13 13-12F)

25.01 In general (10/01/13 13-12F)

(a) AHS determines whether transfers of income or resources made by an individual requesting MABD for long-term care services, or by any member of their financial responsibility group (as defined in § 29.03), are allowable transfers under the rules set forth in this section. This section applies to individuals who are in institutions or who qualify for services in their home or community-based setting as part of the special income group (see § 8.05) or as medically needy (see § 8.06). This section also applies to the spouses of individuals in institutions or who qualify for long-term care services in their home or community-based setting as part of the special income group or as medically needy. If AHS determines that a transfer is not allowable, the individual requesting MABD for long-term care services will not be eligible for such coverage until a penalty period has expired. The start date of the penalty period is based on when the individual would, but for the disallowed transfer, be otherwise eligible for MABD for long-term care services, as explained in more detail in this section. The duration of the penalty period is based on the value of the disallowed transfer.

(b) AHS makes determinations concerning transfers occurring before the individual requests MABD for long-term care services as part of its determination of the individual's initial eligibility. Once AHS has determined that a transfer is disallowed and has established a penalty period that transfer is not reconsidered unless AHS obtains new information about the transfer. If, after the initial determination, AHS discovers that the individual made an additional transfer (or transfers), AHS also determines whether the additional transfer (or transfers) is allowable, whether the date of the additional transfer (or transfers) is before or after the initial determination, and establishes a penalty period (or periods) as required. If the individual requesting MABD for long-term care services has a community spouse, after the month in which the individual is determined eligible for MABD for long-term care services, no resources of the community spouse shall be determined available to the individual (the institutionalized spouse). Accordingly, no transfers by the community spouse after the initial month of the institutionalized spouse's eligibility are considered for purposes of the institutionalized spouse's ongoing eligibility.

(c) § 25.03 specifies the criteria for allowable transfers, to which no penalty period applies, effective for all initial determinations of eligibility for MABD for long-term care services and all redeterminations. No other transfers are allowable.

25.02 Definitions (10/01/13 13-12F)

(a) Transfer of income or resources

For the purposes of this section, a transfer of income or resources is any action taken by an individual requesting MABD for long-term care services or by a member of the individual's financial responsibility group (as defined in § 29.03) or by any other person with lawful access to the income or resources that disposes of the individual's or member's income or resources. The date of the transfer is the date the action was taken. It also applies to certain income and resources to which the individual or member is entitled but does not have access because of an action taken by:

(1) The individual or member of the financial responsibility group entitled to the income or resources;

(2) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or member entitled to the income or resources; or

(3) A person, including a court or administrative body, acting at the direction or upon the request of the individual or member entitled to the income or resources.

(b) Fair market value

Unless otherwise specified, an amount equal to the price of an item on the open market in the individual's locality at the time of a transfer, or contract for sale, if earlier.

25.03 Allowable transfers (10/01/13 13-12F)

(a) Transfers for fair-market value – in general

No penalty period is applied to income or resources transferred for fair market value.

AHS determines whether an individual, or a member of the individual's financial responsibility group, as the case may be, received fair market value for a transfer of income or resources by determining the difference, if any, between the fair market value of the income or resource reduced by any applicable deductions at the time of the transfer and the amount received for the income or resource. Any of the following deductions may be used to reduce fair market value:

(1) The amount of any legally enforceable liens or debts against the transferred income or resource at the time of transfer that reduced the transferor's equity in the income or resource;

(2) The reasonable and necessary costs of making the sale or transfer;

(3) The value of income or resources received by the transferor in exchange for the transferred income or resources;

(4) The value of income or resources returned to the transferor; and

(5) The following verified payments or in-kind support given to or on behalf of the transferor as compensation for receipt of the income or resources by the person who received the income or resources:

(i) Personal services;

(ii) Payments for medical care;

(iii) Funeral expenses of the individual's deceased spouse;

(iv) Taxes, mortgage payments, property insurance, or normal repairs, maintenance and upkeep on the transferred property; or

(v) Support and maintenance (*e.g.*, food, clothing, incidentals, fuel and utilities) provided in the transferor's own home or in the home of the person who received the income or resources from the transferor.

(b) Receipt of fair market value after the date of the transfer

If the value of a transferred resource is scheduled for receipt after the date of transfer, it is considered a transfer for fair market value only if the transferor can expect to receive the full fair-market value of the resource within their expected lifetime. Expected lifetime is determined as follows:

(1) When institutionalized individual is transferor

Expected lifetime of the institutionalized individual is measured at the time of the transfer as determined in accordance with actuarial publications of the Office of the Chief Actuary of the SSA (http://socialsecurity.gov/OACT/STATS/table4c6.html) and set forth in Vermont's Medicaid Procedures Manual.

(2) When spouse of institutionalized individual is transferor

Expected lifetime of the spouse of the institutionalized individual is measured at the time of the transfer as determined in accordance with actuarial publications of the Office of the Chief Actuary of the SSA) (http://socialsecurity.gov/OACT/STATS/table4c6.html) and set forth in Vermont's Medicaid Procedures Manual.

(3)

Pursuant to the authority granted in Vermont Act 71 § 303(7)(2005), AHS may develop alternate actuarial tables that will be consistent with federal law and adopted by rule.

(c) Transfers for less than fair-market value – in general

A penalty period is not imposed for a transfer made by an individual or by a member of the individual's financial responsibility group (as defined in § 29.03) for less than fair market value that meets one or more of the following criteria:

(1) Time of transfer – beyond look-back period

The date of the transfer was more than 60 calendar months prior to the first month in which the individual both requests MABD for long-term care services and meets all other requirements for eligibility.

(2) Transferred income or resources are returned

The transferred income or resources have been returned to the transferor or otherwise remain available to the transferor or to a member of the transferor's financial responsibility group (as defined in § 29.03).

(3) Property transferred of a person not in the financial responsibility group

The action that constituted the transfer was the removal of the individual's (or member's) name from a joint account in a financial institution, and the individual (or member) has demonstrated, to AHS's satisfaction, that the funds in the account accumulated from the income and resources of another owner who is not the individual (or the member).

(4) Transfer of resource for a purpose other than creation or maintenance of eligibility for MABD for long-term care

The transferor has documented to AHS's satisfaction convincing evidence that the resources were transferred exclusively for a purpose other than for the individual to become or remain eligible for MABD for long-term care services. A signed statement by the transferor is not, by itself, convincing evidence. Examples of convincing evidence are documents showing that:

(i) The transfer was not within the transferor's control (e.g., was ordered

by a court);

(ii) The transferor could not have anticipated the individual's eligibility for MABD for long-term care services on the date of the transfer (e.g., the individual became disabled due to a traumatic accident after the date of transfer); or

(iii) A diagnosis of a previously undetected disabling condition leading to the individual's MABD for long-term care services eligibility was made after the date of the transfer.

(5) Transfers of specified property for the benefit of certain family members

The transfer meets the criteria specified below for transfers involving trusts (see paragraph (d)), transfers of homes (see paragraph (e)), and transfers for the benefit of certain family members (see paragraph (g)).

(6) Intent to transfer for fair market value

The transferor has demonstrated to AHS's satisfaction that they intended to dispose of the income or resources either at fair market value, or for other valuable consideration.

(7) Transfer of excluded income or resources

(i) The transferor transferred excluded income or resources.

(ii) Penalties are imposed for the transfer for less than fair market value of any asset considered by the SSA's SSI program to be countable or excluded. For example, transfer of a home or of the proceeds of a loan are both subject to penalty.

(d) Allowable transfers involving trusts

A penalty period is not imposed for transfers involving trusts that meet one or more of the following criteria:

(1) The income or resources were transferred to an irrevocable trust that does not under any circumstances allow disbursements to or for the benefit of the individual , and the date of the transfer was more than 60 calendar months prior to the first month in which the individual requests MABD for long-term care services.

(2) The action that constituted the transfer was the establishment of a trust solely for the benefit of a person under age 65 who is blind or permanently and totally disabled.

(3) The action that constituted the transfer was the establishment of a pooled trust, specified at subsection 29.08(e)(1)(G) unless the individual was age 65 or older when they established the trust. If so, the transfer is not exempted from the imposition of a transfer penalty period.

(4) The action that constituted the transfer was the establishment of a revocable trust. However, AHS considers any payment from the revocable trust to anyone other than the individual or a member of their financial responsibility group a transfer for less than fair-market value subject to penalty unless the payment is for their benefit.

(e) Allowable transfers of homes to family

A penalty period is not imposed for the transfer of a home that meets the definition at 29.08(a)(1) provided that title was transferred by the member of the financial responsibility group who is requesting MABD for long-term care services to

members

one or more of the following persons:

(1) The member's spouse;

(2) The member's child who was under age 21 on the date of the transfer;

(3) The member's son or daughter who is blind or permanently and totally disabled, regardless of age;

(4) The brother or sister of the member requesting MABD for long-term care services, when:

(i) The brother or sister had an equity interest in the home on the date of the transfer; and

(ii) Was residing in the home continuously for at least one year immediately prior to the date the member began to receive MABD for long-term care services, including long-term care services in the individual's home or community-based setting; or

(5) The son or daughter of the member requesting MABD for long-term care services, provided that the son or daughter:

(i) Was residing in the home continuously for at least two years immediately prior to the date the member (parent) began receiving MABD for long-term care services, including services in the individual's home or community-based setting; and

(ii) Provided care to the member during part or all of this period that allowed the member to postpone receipt of MABD for long-term care services.

(f) Allowable transfers involving life-estate interests in another individual's home

A penalty period is not imposed for the purchase of a life-estate interest in another person's home when:

(1) It is the purchaser's residence; and

(2) The purchaser resides in the home for a period of at least one year after the purchase.

(g) Other allowable transfers to family members

A penalty period is not imposed for transfers to certain family member that meet any of the following criteria:

(1) The transfer was for the sole benefit of the individual requesting MABD for long-term care services.

(2) The income or resource was transferred by an institutionalized spouse to their community spouse before the initial determination of the institutionalized spouse's eligibility for MABD for long-term care services. This also applies to a transfer made to a third party for the sole benefit of the community spouse.

(3) The income or resource was transferred to the individual's son or daughter who is blind or permanently and totally disabled or to a trust for the sole benefit of such son or daughter regardless of their age.

(h) Transfers involving annuities

(1) In general

(i) *Purchases.* Any annuity purchased by the individual or, if married, their community spouse on or after February 8, 2006, must name Vermont Medicaid as the first remainder beneficiary of the annuity up to the amount of MABD payments, including payments for MABD for long-term-care services, made by the state on behalf of the individual. In cases where a minor or disabled child or a community spouse is named as a remainder beneficiary ahead of the state, Vermont Medicaid must be named as the secondary remainder beneficiary. If Vermont Medicaid is not named as a remainder beneficiary in the correct position, the purchase of the annuity is considered a transfer for less than fair market value. When Vermont Medicaid is a remainder beneficiary of an annuity, issuers of annuities are required to notify Vermont Medicaid of any changes in the disbursement of income or principal from the annuity as well as any changes to the state's position as remainder beneficiary.

(ii) *Annuity*-related *transactions other than purchases.* In addition to the purchase of an annuity, certain transactions with respect to an annuity that occur on or after February 8, 2006, make an annuity, including one purchased before that date, subject to the provisions of this paragraph. Such transactions include any action taken by the individual or, if married, their community spouse that changes the course of payments to be made by the annuity or the treatment of the income or principal of the annuity. Routine changes and automatic events that do not require any action or decision are not considered transactions that would subject the annuity to this treatment.

(2) Additional requirements

(i) In addition to the requirement under paragraph (h)(1) that Vermont Medicaid be named as a remainder beneficiary in the correct position in order for the purchase of an annuity by the individual or, if married, their community spouse to not be considered a transfer for less than fair market value, if *the* purchase of the annuity is by the individual requesting MABD for long-term care services, the purchase must also meet one or more of the four alternatives described below in order for it to not be subject to a transfer penalty. To determine that an annuity is established under any of the various provisions of the Code that are referenced in (iii) and (iv) below, AHS relies on verification from the financial institution, employer or employer association that issued the annuity. The burden of proof is on the individual to produce this documentation. Absent such documentation, AHS considers the purchase of the annuity a transfer for less than fair-market value and, as such, subject to a penalty.

(ii) The four alternatives are as follows:

(A) The annuity meets the provisions of §§ 29.08(d)(1) or 29.09(d)(1).

(B) The annuity is:

(I) Irrevocable and nonassignable;

(II) Provides for payments to the individual in equal intervals and equal amounts with no deferral and no balloon payments made;

(III) Is actuarially sound because it does not exceed the life expectancy of the individual, as determined using the actuarial publications of the Office of the Chief Actuary of the SSA (http://socialsecurity.gov/OACT/STATS/table4c6.html) and set forth in Vermont's Medicaid Procedures Manual; and

(IV) Returns to the individual at least the amount used to establish the contract and any additional payments plus earnings, as specified in the contract.

(iii) The annuity is considered either:

(A) An individual retirement annuity (according to § 408(b) of the Code), or

(B) A deemed Individual Retirement Account (IRA) under a qualified employer plan (according to § 408(q) of the Code).

(iv) The annuity *is* purchased with proceeds from one of the following:

(A) A traditional IRA (§ 408(a) of the Code);

(B) Certain accounts or trusts which are treated as traditional IRAs (§ 408(c) of the Code);

(C) A simplified retirement account (§ 408 (p) of the Code);

(D) A simplified employee pension (§ 408 (k) of the Code); or

(E) A Roth IRA (§ 408A of the Code).

(3) Impermissible transfers

An annuity that does not meet the above criteria is assessed a transfer penalty based on its fair-market value. The fair market value of an annuity equals the amount of money used to establish the annuity and any additional amounts used to fund the annuity, plus any earnings and minus any early withdrawals and surrender fees.

(i) Allowable transfers involving promissory notes and other income-producing resources

(1) Promissory notes or similar income-producing resources (contracts) are assessed a transfer penalty based on their fair market value unless they:

(i) Have a repayment term that is actuarially-sound as determined in accordance with actuarial publications of the Office of the Chief Actuary of the SSA (http://socialsecurity.gov/OACT/STATS/table4c6.html) and set forth in Vermont's Medicaid Procedures Manual;

(ii) Provide for payments to be made in equal amounts during the term of

the loan, with no deferral and no balloon payments made; and

(iii) Prohibit the cancellation of the balance upon the death of the lender.

(2) Fair market value equals the amount of money used to establish the contract and any additional payments used to fund it, plus any earnings and minus any payments already received as of the date of the application for MABD for long-term care services.

(j) Transfers involving jointly-owned income or resources

(1) Joint-ownership established on or after January 1, 1994

For any joint-ownership established on or after January 1, 1994, the portion of the jointly-owned asset subject to the imposition of a penalty period is evaluated based on the specific circumstances of the situation. The individual is presumed to own a jointly-owned resource using the rules in § 29.09. In the case of a jointly-owned account in a financial institution, for example, since the account is presumed to be owned entirely by the individual (see § 29.09(c)(5)(ii)), a transfer penalty is imposed against the individual for any amount withdrawn from the account by another joint owner on the account. The individual may rebut the presumption of ownership by establishing to AHS's satisfaction that the amount withdrawn was, in fact, the sole property of and contributed to the account by the other joint owner (or owners), and thus did not belong to the individual.

(2) Joint-ownership established before January 1, 1994

For a joint ownership established before January 1, 1994, the date of the transfer is the date the other person (or persons) became a joint owner. The value of the transfer equals the amount that the resource available to the individual or, if married, the individual's spouse was reduced in value when the other person (or persons) became a joint owner.

25.04 Penalty period for disallowed transfers (10/01/13 13-12F)

(a) Definition: Otherwise eligible

(1) For purposes of determining the start date of the penalty period because of disallowed transfers, an individual is considered "otherwise eligible" for MABD for long-term care services as of the earliest date they pass all eligibility criteria in the sequence listed below. They must also meet each of these criteria in any month for which they request retroactive eligibility:

(i) Clinical criteria (see definition of long-term care in § 3.00).

(ii) Citizenship and identity criteria (§ 17.00).

(iii) Category (§§ 8.05 and 8.06).

(iv) Residency (§ 21.00)

(v) Living arrangements (§ 20.00).

(vi) Resources (§ 29.07).

(vii) Income (§ 29.11) (for anyone with gross income above the IIS, see explanation below).

(2) When an individual's income exceeds the IIS, the individual must

spend down to the applicable PIL in the month of application or the next month. An individual with a penalty is subject to the penalty period start date beginning on the date the spenddown is met. If the spenddown is not met in the month of application or the next month, the individual is denied MABD for long-term care services. AHS then determines whether the person is eligible for MABD (other than MABD for long-term care services). If so, it assesses a 6-month spend down.

(3) Examples:

(i) The individual applies in June and requests retroactive coverage as of April. The individual meets all eligibility criteria but their gross countable income exceeds the IIS and they have transfers that will result in a 38 day penalty period. The spenddown period is April – September. The individual meets their spenddown on April 23rd. April 23rd is the date the individual is considered to be "otherwise eligible." Their penalty period would be April 23rd – May 30th.

(ii) Same case as in (i), but no retroactive coverage is requested. The spenddown period is June-November. The spenddown is met June 23rd. June 23rd is the date the individual is considered to be "otherwise eligible." The penalty period is June 23rd – July 30th.

(b) Penalty period – in general

If a transfer is disallowed, a penalty period of restricted Medicaid coverage to an otherwise eligible individual is imposed. During this period, no payments are made for MABD for long-term care services. Payments are made for all other covered Medicaid services provided to the individual during the period of restricted coverage.

(c) Penalty date

(1) Transfers made in a single month

The penalty date is the beginning date of each penalty period imposed for a disallowed transfer. The penalty date starts on the first day in which the individual would have been otherwise eligible for MABD for long-term care services (see paragraph (a) of this subsection for explanation of "otherwise eligible").

(2) Transfers occurring in different months

Penalty periods run consecutively rather than concurrently, in the order in which the transfers occurred. If, after establishing a penalty period for disallowed transfers, it is determined that additional disallowed transfers were made in a subsequent month but before the end of the first penalty period, the first day following the end of the first penalty period will be designated as the penalty date for the subsequent penalty period.

(d) Penalty period

(1) Calculation of penalty

The number of days in a penalty period are equal to the total value of all disallowed transfers made during a given calendar month divided by the average daily cost to a privately-paying patient of nursing facility services in the state as of the date of application or the date of discovery, if additional disallowed transfers are discovered after the initial determination of eligibility for MABD for long-term care services.

(2) Transfers in different

Penalty periods for transfers in different calendar months are consecutive and

calendar months — established in the order in which the disallowed transfers occurred.

(3) Continuous nature of penalty period — A penalty period runs continuously from the first date of the penalty period, even if the individual stops receiving long-term care services.

(e) Penalty when both spouses request MABD for long-term care

(1) In general — The following rules are applied to the assignment of penalty periods when both members of a couple are requesting or receiving MABD for long-term care services.

(2) Spouses eligible at same time — For spouses determined otherwise eligible for MABD for long-term care services at the same time, the value of the disallowed transfer is divided by two to determine the number of days of restricted coverage for each member of the couple.

(3) Penalty period for one spouse is running at the time the other requests MABD for long-term care — If the penalty period established for one member of the couple has not yet expired when the other member of the couple requests and is determined otherwise eligible for MABD for long-term care services, the number of days remaining in the penalty period is divided by two to determine the number of days of restricted coverage for each member of the couple.

(4) Death of a spouse during penalty period — When the member of the couple for whom a penalty period has been established dies, the days remaining in that member's penalty period are not reassigned to their spouse if the spouse requests and is determined otherwise eligible for MABD for long-term care services.

(5) Penalty periods for transfer by second spouse to request MABD for long-term care — When a penalty period is established for a disallowed transfer by the second member of the couple to request and be determined otherwise eligible for MABD for long-term care services, that penalty period is assigned to the spouse who made the transfer provided that it was made after the determination of disallowed transfers for the first spouse.

25.05 Undue Hardship (10/01/13 13-12F)

(a) In general — AHS does not establish a penalty period resulting from a disallowed transfer when it determines that restricted coverage will result in an undue hardship. Undue hardship is considered only in cases where AHS has first determined that a transfer has been made for less than fair market value and that no transfer exception applies (see § 25.03).

(b) Definition: Undue hardship

(1) Depriving the individual of:

(i) Medical care, such that the individual's health or life would be endangered; or

(ii) Food, clothing, shelter, or other necessities of life.

(2) Undue hardship does not exist when the application of a transfer penalty merely causes an individual or the individual's family member(s) inconvenience or restricts their lifestyle. Undue hardship does not exist when the individual transferred the assets to their

community spouse and the community spouse has countable or excluded resources in excess of the community spouse resource allocation (CSRA) standard (§ 29.10(e)).

(c) Undue hardship reasons

In determining the existence of undue hardship, all circumstances involving the transfer and the situation of the individual are considered. Undue hardship is established when one or more of the following circumstances, or any other comparable reasons, exist:

(1) Whether imposition of the transfer penalty would result in the individual's immediate family qualifying for SSI; Reach Up; AABD; General Assistance; 3SquaresVTs; or another public assistance program requiring a comparable showing of financial need.

(2) Whether funds can be made available for the individual's long-term care only if assets such as a family farm or other family business are sold, and the assets are the primary source of income for the individual's spouse, parents, children or siblings.

(3) Whether an agent under a power of attorney (POA) or a guardian of the individual transferred the asset, and the POA or guardian was not acting in the best interest of the individual when the transfer was made as determined by AHS or a court, or the transfer forms the basis for a report to AHS for investigation of abuse, neglect or exploitation.

(4) Whether the individual was deprived of an asset by exploitation, fraud or misrepresentation. Such claims must be documented by official police reports or civil or criminal action against the alleged perpetrator or substantiated by AHS or by a sworn statement to AHS attesting to the fact that the claim was reported to the police or to the AHS department responsible for substantiating such claims.

(5) Whether the individual cannot recover the assets due to loss, destruction, theft, or other similar circumstances.

(d) Authority of provider to file request for individual

For the purposes of this subsection, a long-term care provider may, with the consent of the individual or the personal representative of the individual, file a request for undue hardship on behalf of the individual.

(e) Presumption of care and rebuttal of presumption

(1) *Presumption.* When the transfer is to a person, AHS presumes the recipient of the transferred asset could make arrangements for the individual's care and the care of dependent family members up to the value of the transfer unless the evidence submitted indicates that there is no reasonable way that the person can make any of these arrangements. The facts and verification required to determine if the recipient of the transferred asset can make other arrangements to pay or provide the care of the individual, or to provide for the needs of financially-dependent family members, may include the following, if applicable:

(i) A copy of the tax return for the preceding calendar year;

(ii) All earnings pay stubs for the past 12 months;

(iii) All bank books, stocks, bonds, certificates, life insurance policies (e.g. bank books must include those before and after receipt of the

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Part Five
Financial Methodologies

28.00 Financial eligibility standards – application of modified adjusted gross income (MAGI) (10/01/2013, 13-12F)

28.01 Basis, scope, and implementation[1] (10/01/2013, 13-12F)

(a) This section implements § 1902(e)(14) of the Act.

(b) Effective January 1, 2014, the financial methodologies set forth in this section will be applied in determining the financial eligibility of all individuals for health benefits, except for individuals identified in paragraph (h) of § 28.03 and as provided in paragraph (c) of this subsection.

(c) In the case of determining ongoing eligibility for an individual determined eligible for Medicaid coverage to begin on or before December 31, 2013, application of the financial methodologies set forth in this section will not be applied until March 31, 2014, or the next regularly-scheduled renewal of eligibility for such individual under § 75.00, whichever is later.

28.02 Definitions (10/01/2013, 13-12F)

For purposes of this section:

(a) Family size[2]

(1) The number of persons counted as members of the individual's household. Family size may include individuals who are not subject to or are exempt from penalty for failing to maintain MEC.

(2) Special counting rule for Medicaid: In the case of determining the family size of a pregnant woman, or the family size of other individuals who have a pregnant woman in their household, the pregnant woman is counted as herself plus the number of children she is expected to deliver.

(b) Modified Adjusted Gross Income (MAGI) [3]

Adjusted gross income (within the meaning of § 62 of the Code) increased by:

(1) Amounts excluded from gross income for citizens or residents of the United States living abroad;

(2) Tax-exempt interest the tax filer receives or accrues during the benefit year; and

(3) Social Security benefits not already included in adjusted gross income..

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[1] 42 CFR § 435.603(a).

[2] 26 CFR § 1.36B-1(d); 42 CFR § 435.603(b). Note: The IRS rules do not include unborn children in the determination of family size.

[3] 26 CFR § 1.36B-1(e)(2); 42 CFR 435.4; 45 CFR § 155.300. These sections reference § 36B(d)(2)(B) of the Code. This is the definition found in that provision.

28.03 MAGI-Based Medicaid (10/01/2013, 13-12F)	
(a) Definition: Tax dependent	For purposes of MAGI-based Medicaid, the term "tax dependent" has the same meaning as the term "dependent" under § 152 of the Code, and also includes an individual for whom another individual claims a deduction for a personal exemption under § 151 of the Code for the benefit year.[4]
(b) Basic rule[5]	Except as specified in paragraphs (h), (i), and (j) of this subsection, financial eligibility for MAGI-based Medicaid is determined based on household income, as defined in paragraph (c) of this subsection.
(c) Household income[6]	
(1) General rule	Except as provided in paragraphs (c)(2) through (c)(4) of this subsection, household income for MAGI-based Medicaid is the sum of the MAGI-based income, as defined in paragraph (d) of this subsection, of every person included in the individual's household, as defined in paragraph (e) of this subsection.
(2) Income of children and tax dependents	(i) The MAGI-based income of a person who is included in the household of their natural, adopted, or step parent, and is not expected to be required to file a federal tax return[7] for the benefit year in which eligibility for Medicaid is being determined, is not included in household income whether or not such person files a federal tax return. (ii) The MAGI-based income of a tax dependent described in paragraph (e)(3)(i) of this subsection (individual other than a spouse or child who expects to be claimed as a tax dependent by another tax filer) who is not expected to be required to file a federal tax return[8] for the benefit year in which eligibility for Medicaid is being determined, is not included in the household income of the tax filer whether or not such tax dependent files a federal tax return.
(3) Available cash support not included	In the case of an individual described in paragraph (e)(3)(i) of this subsection (individual other than a spouse or child who expects to be claimed as a tax dependent by another tax filer), household income does not include cash support provided by the person claiming such individual as a tax dependent.
(4) Five-percent disregard	In determining the eligibility of an individual for Medicaid under the eligibility group with the highest income standard under which the individual may be determined eligible using MAGI-based methodologies, an amount equivalent to 5 percentage points of the FPL for the applicable family size is deducted from household income.
(5) Sponsored	(i) In determining the financial eligibility of a noncitizen who is admitted to

[4] 42 CFR § 435.4

[5] 42 CFR § 435.603(c).

[6] 42 CFR § 435.603(d).

[7] As required under section 6012(a)(1) of the Code.

[8] *Id.*

noncitizens	the United States on or after August 22, 1996, based on a sponsorship under § 204 of the INA, the income of the sponsor and the sponsor's spouse, if living with the sponsor, must be counted as available to the noncitizen when all four of the conditions set forth in (A) through (D) below are met. The responsibility of a sponsor continues until the noncitizen is naturalized or credited with 40 qualifying quarters of coverage by the SSA (as described in (ii) below). Children and pregnant women who are exempt from the five-year bar pursuant to § 17.03(c)(6) are not subject to these provisions. The four conditions are as follows: (A) The sponsor has signed an affidavit of support on a form developed by the United States Attorney General as required by PRWORA to conform to the requirements of § 213A(b) of INA; (B) The noncitizen is lawfully admitted for permanent residence, and a five-year period of ineligibility for Medicaid following entry to the United States has ended; (C) The noncitizen is not battered; and (D) The noncitizen is not indigent, defined as unable to obtain food and shelter without assistance, because his or her sponsor is not providing adequate support. (ii) *Qualifying quarters of coverage.* (A) A noncitizen is credited with the following qualifying quarters of coverage (as defined under Title II of the Act); (I) All of the qualifying quarters of coverage worked by the noncitizen; (II) All of the qualifying quarters of coverage worked by a parent of such noncitizen while the noncitizen was under age 18; and (III) All of the qualifying quarters of coverage worked by a spouse of such noncitizen during their marriage as long as the noncitizen remains married to such spouse or such spouse is deceased. (B) No qualifying quarter of coverage for any period beginning after December 31, 1996 may be credited to a noncitizen under (II) or (III) above if the parent or spouse, as the case may be, of such noncitizen received any federal means-tested public benefit during the period for which the qualifying quarter of coverage is credited. Federal means-tested benefits for this purpose do not include: (I) Emergency medical assistance; (II) Short-term, non-cash, in-kind emergency disaster relief; (III) Assistance under the National School Lunch Act or the Child Nutrition Act of 1966; (IV) Public health assistance for immunizations or testing and treatment of symptoms of communicable diseases not paid by Medicaid; (V) Payments for foster care and adoption assistance under parts B

	and E of Title IV of the Act, under certain conditions; (VI) Programs, services or assistance specified by the Attorney General; (VII) Programs of student assistance under Titles IV, V, IX and X of the Higher Education Act of 1965, and Titles III, VII and VIII of the PHS Act; (VIII) Means-tested programs under the Elementary and Secondary Education Act of 1965; (IX) Benefits under the Head Start Act; or (X) Benefits under the Job Training Partnership Act.
(d) MAGI-based income[9]	For the purposes of this subsection, MAGI-based income means income calculated using the same financial methodologies used to determine MAGI, with the following exceptions: (1) An amount received as a lump sum is counted as income only in the month received. (2) Scholarships, awards, or fellowship grants used for education purposes and not for living expenses are excluded from income. (3) *American Indian/Alaska Native exceptions.* The following are excluded from income: (i) Distributions from Alaska Native Corporations and Settlement Trusts; (ii) Distributions from any property held in trust, subject to federal restrictions, located within the most recent boundaries of a prior federal reservation, or otherwise under the supervision of the Secretary of the Interior; (iii) Distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from: (A) Rights of ownership or possession in any lands described in paragraph (d)(3)(ii) of this subsection; or (B) Federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources; (iv) Distributions resulting from real property ownership interests related to natural resources and improvements: (A) Located on or near a reservation or within the most recent boundaries of a prior federal reservation; or (B) Resulting from the exercise of federally-protected rights relating to such real property ownership interests; (v) Payments resulting from ownership interests in or usage rights to

[9] 42 CFR § 435.603(e).

	items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom; (vi) Student financial assistance provided under the Bureau of Indian Affairs education programs.
(e) Household	
(1) In general	For purposes of household composition: (i) "Child" includes a natural or biological, adopted or step-child. (ii) "Parent" includes a natural or biological, adopted or step-parent. (iii) "Sibling" includes a natural or biological, adopted or step-sibling
(2) Basic rule for tax filers not claimed as a tax dependent	In the case of an individual who expects to file a federal tax return for the benefit year in which an initial determination or renewal of eligibility is being made, and who does not expect to be claimed as a tax dependent by another tax filer, the household consists of the tax filer and, subject to paragraph (e)(6) of this subsection, all persons whom such individual expects to claim as a tax dependent.
(3) Basic rule for individuals claimed as a tax dependent	In the case of an individual who expects to be claimed as a tax dependent by another tax filer for the benefit year in which an initial determination or renewal of eligibility is being made, the household is the household of the tax filer claiming such individual as a tax dependent, except that the household must be determined in accordance with paragraph (e)(4) of this subsection in the case of: (i) Individuals other than a spouse or child who expect to be claimed as a tax dependent by another tax filer; (ii) Individuals under the age specified under paragraph (e)(4)(iv) of this subsection who expect to be claimed by one parent as a tax dependent and are living with both parents but whose parents do not expect to file a joint federal tax return; and (iii) Individuals under the age specified under paragraph (e)(4)(iv) of this subsection who expect to be claimed as a tax dependent by a non-custodial parent. For purposes of this paragraph: (A) The custodial parent is the parent so named in a court order or binding separation, divorce, or custody agreement establishing physical custody; or (B) If there is no such order or agreement, or in the event of a shared custody agreement, the custodial parent is the parent with whom the child spends most nights.
(4) Rules for individuals who neither file a tax return nor are claimed as a tax dependent	In the case of an individual who does not expect to file a federal tax return and does not expect to be claimed as a tax dependent for the benefit year in which an initial determination or renewal of eligibility is being made, or who is described in paragraph (e)(3)(i), (e)(3)(ii), or (e)(3)(iii) of this subsection, the household consists of the individual and, if living with the individual: (i) The individual's spouse;

	(ii) The individual's children under the age specified in (iv) of this paragraph (e)(4); and (iii) In the case of an individual under the age specified in (iv) of this paragraph (e)(4), the individual's parents and siblings under the age specified in (iv) of this paragraph (e)(4). (iv) The age specified in this paragraph (e)(4) is age 19 or, in the case of a full-time student, age 21.
(5) Married couples	In the case of a married couple living together, each spouse is included in the household of the other spouse, regardless of whether they expect to file a joint federal tax return[10] or whether one spouse expects to be claimed as a tax dependent by the other spouse.
(6) Households of individuals whom tax filer cannot establish as a dependent	For purposes of paragraph (e)(2) of this subsection, if, consistent with the procedures adopted by the state in accordance with § 56.00, a tax filer cannot reasonably establish that another person is a tax dependent of the tax filer for the benefit year in which Medicaid is sought, the inclusion of such person in the household of the tax filer is determined in accordance with paragraph (e)(4) of this subsection.
(f) No resource test or income disregards[11]	In the case of an individual whose financial eligibility for Medicaid is determined in accordance with this subsection, AHS will not: (1) Apply any resources test; or (2) Apply any income or expense disregards under §§ 1902(r)(2) or 1931(b)(2)(C), or otherwise under Title XIX of the Act, except as provided in paragraph (c)(4) of this subsection.
(g) Budget period[12]	
(1) Applicants and new enrollees	Financial eligibility for Medicaid for applicants, and other individuals not receiving Medicaid benefits at the point at which eligibility for Medicaid is being determined, must be based on current monthly household income and family size.
(2) Current beneficiaries	For an individual who has been determined financially eligible for Medicaid using the MAGI-based methods set forth in this section, AHS will base financial eligibility on projected annual household income and family size for the remainder of the current calendar year.
(3) Reasonably-predictable income fluctuations	In determining current monthly or projected annual household income and family size under paragraphs (g)(1) or (g)(2) of this subsection, the state may adopt a reasonable method to include a prorated portion of reasonably predictable future income, to account for a reasonably predictable increase or decrease in future income, or both, as evidenced by a signed contract for employment, a clear history of predictable fluctuations in income, or other clear indicia of such future changes in income. Such future increase or decrease in income or family size

[10] See, § 6013 of the Code.

[11] 42 CFR § 435.603(g).

[12] 42 CFR § 435.603(h).

	must be verified in the same manner as other income and eligibility factors, in accordance with the income and eligibility verification requirements at §§ 53.00 through 56.00, including by self-attestation if reasonably compatible with other electronic data obtained in accordance with such sections.
(h) Alternative methodology to avoid eligibility gap[13]	If an individual who is a U.S. citizen is determined to be financially ineligible for Medicaid using the MAGI-based Medicaid methodologies set forth in this subsection, but their household income is determined to be less than 100 percent FPL using the MAGI methodologies for determining eligibility for APTC and CSR, as set forth in § 28.05, the individual's eligibility for Medicaid will be determined using the MAGI methodologies set forth in § 28.05.
(i) Eligibility groups for which MAGI-based methods do not apply[14]	The financial methodologies described in this subsection are not applied in determining the Medicaid eligibility of individuals described in this paragraph. Except for the individuals described in (1) of this paragraph (i), the financial methods described in § 29.00 will be used to determine Medicaid eligibility for such individuals. (1) Individuals whose eligibility for Medicaid does not require a determination of income, including, but not limited to, individuals receiving SSI eligible for Medicaid under § 8.05(a) and individuals deemed to be receiving SSI and eligible for Medicaid under § 8.05(h) and (f). (2) Individuals who are age 65 or older when age is a condition of eligibility. (3) Individuals whose eligibility is being determined on the basis of being blind or disabled, or on the basis of being treated as being blind or disabled, but only for the purpose of determining eligibility on such basis. (4) Individuals who request Medicaid coverage for long-term care services for the purpose of being evaluated for an eligibility group for which meeting a level-of-care need is a condition of eligibility or under which long-term care services not covered for individuals determined eligible using MAGI-based financial methods are covered. See § 3.00 for the definition of long-term care services. (5) Individuals who are being evaluated for eligibility for Medicare cost-sharing assistance under § 8.07, but only for purposes of determining eligibility for such assistance.
(j) Special rule: family planning services[15]	In the case of an individual whose eligibility is being determined under § 9.03(g) (family planning services), AHS will: (1) Consider the household to consist of only the individual for purposes of paragraph (e) of this subsection; (2) Count only the MAGI-based income of the individual for purposes of

[13] 42 CFR § 435.603(i).

[14] 42 CFR § 435.603(j).

[15] 42 CFR § 435.603(k) (NPRM, 78 FR 4593).

	paragraph (c) of this subsection; and (3) Increase the family size of the individual, as defined in § 28.02, by one.
28.04 Medically-needy MCA – income eligibility (10/01/2013, 13-12F)	
(a) In general	Income eligibility of an individual for medically-needy MCA will be determined in accordance with § 7.03(a)(8), § 28.03 and this subsection.
(b) Financial responsibility of relatives and other individuals[16]	(1) Financial responsibility of relatives and other persons for the individual is limited to the following: (i) A spouse for their spouse when both are living in the same household; and (ii) A parent, stepparent, or adoptive parent for their unmarried child under the age of 21 living in the same household unless the child is pregnant or a parent whose own child is living in the household and they make a monthly (or more frequent) room or board payment to their parents. (2) Except for a spouse of an individual or a parent for a child who is under age 21, income and resources of any relative will not be considered as available to an individual. (3) When a couple ceases to live together, only the income of the individual spouse will be counted in determining their eligibility, beginning the first month following the month the couple ceases to live together.
(c) Spenddown	The income spenddown provisions set forth in § 30.00 apply to an individual requesting medically-needy MCA. For purposes of the spenddown provisions at § 30.00, the individual is considered the Medicaid group.
28.05 APTC and CSR (10/01/2013, 13-12F)	
(a) Definition: Tax dependent	For purposes of APTC and CSR, the term "tax dependent" has the same meaning as the term "dependent" under § 152 of the Code.
(b) Basic rule	Financial eligibility for APTC and CSR is determined based on household income as defined in paragraph (c) of this subsection.
(c) Household income[17]	Household income is the sum of: (1) A tax filer's MAGI; plus (2) The aggregate MAGI of all other individuals who: (i) Are included in the taxpayer's household (as defined in paragraph (d) of this subsection); and

[16] 42 CFR § 435.602 (NPRM, 78 FR 4593).

[17] 26 CFR § 1.36B-1(e) (NPRM, 78 FR 25909).

	(ii) Are required to file a federal income tax return for the benefit year.
(d) Household	The household consists of the tax filer, the tax filer's spouse, and all individuals claimed as the tax filer's tax dependents. As described in § 58.02(b)(2), married couples must file joint federal tax returns in order to be considered for APTC and CSR.

29.00 Financial eligibility standards – Medicaid for the aged, blind, and disabled (MABD) (10/01/2013, 13-12F)

29.01 Introduction (10/01/2013, 13-12F)

An individual who meets the nonfinancial requirements for MABD must also meet the financial requirements specified in this section. AHS determines financial eligibility for MABD, including MABD for long-term care services, which includes waiver programs operated by AHS's various departments. AHS determines patient-share costs for individuals eligible for MABD for long-term care services (see § 24.00), patient-share costs for children eligible under the Department of Mental Health's waiver program, and patient-share costs for individuals enrolled in the home-and-community-based waiver program for people with developmental disabilities.

To determine an individual's financial eligibility for MABD, AHS calculates the countable income and countable resources of the individual's financial responsibility group and compares those amounts to standards based on the size of the individual's Medicaid group. The first step in determining financial eligibility is to identify the members of the individual's financial responsibility group and the members of the individual's Medicaid group. An aged, blind, or disabled individual requesting MABD is always a member of both groups.

The rules for forming the financial responsibility group are specified in § 29.03.

The rules for forming the Medicaid group are specified in § 29.04.

The rules on resources are specified in §§ 29.07 through 29.10.

The rules on income are specified in §§ 29.11 through 29.15.

29.02 Definitions (10/01/2013, 13-12F)

The following definitions apply throughout this section.

(a) Child

(1) An individual who:

(i) Is under age 18 or is a student under age 22;

(ii) Has always been single; and

(iii) Lives with a parent.

(A) A child is not considered living with a parent when:

(I) The parent has relinquished control to a school or vocational facility;

(II) The child is confined to a public institution or is in the

	custody of a public agency; (III) The child is a member of the armed forces; (IV) The child lives in a private nonmedical facility; or (V) The child has been admitted to long-term care. (B) A child away at school who returns to a parent's home for vacations, holidays, or some weekends is considered living with that parent. (2) An individual who qualifies for the Katie Beckett coverage group (see § 8.05(k)(6)) is not considered a child for the purposes of determining their financial eligibility for MABD. (3) An individual is no longer considered a child on the first day of the month following the calendar month in which they no longer meet the definition of child.
(b) Adult	An individual who is not a child.
(c) Eligible child	For purposes of deeming, as described in § 29.05, a child who is a natural or adopted child under the age of 18, who lives in a household with one or both parents, is not married, and meets the non-financial eligibility requirements for MABD.
(d) Ineligible child	For deeming purposes, a child, as defined in (a) of this subsection, who does not meet the non-financial criteria for MABD, lives in the same household as the individual requesting MABD, and is: (1) The natural child or adopted child of the individual; (2) The natural or adopted child of the individual's spouse, or (3) The natural or adopted child of the individual's parent or of the spouse of the individual's parent.
(e) Ineligible parent	For deeming purposes, a person who does not meet the non-financial criteria for MABD, lives with an eligible child, and is: (1) A natural or adoptive parent of the child; or (2) The spouse of a natural or adoptive parent of the child.
(f) Ineligible spouse	For deeming purposes, the spouse who lives with the individual requesting MABD and does not meet the nonfinancial eligibility criteria for MABD.
29.03 Formation of the financial responsibility group (10/01/2013, 13-12F)	
(a) In general	The financial responsibility group for MABD consists of the individuals whose income and resources are considered available to the Medicaid group in the eligibility determination. With some exceptions, spouses are considered financially responsible for each other, and parents are considered financially responsible for their children. The following paragraphs set forth the rules for determining membership in the financial

	responsibility group and the portion of the group's income considered available to the Medicaid group.
(b) Financial responsibility group for an adult	The financial responsibility group for an adult requesting MABD, including MABD for long-term care services, is the same as the adult's Medicaid group.
(c) Financial responsibility group for a child	The financial responsibility group for a child requesting MABD includes the child and any parents living with the child until the child reaches the age of 18.
(d) Financial responsibility group for a sponsored noncitizen	(1) The financial responsibility group for a noncitizen admitted to the United States on or after August 22, 1996, based on a sponsorship under §204 of the INA, includes the income and resources of the sponsor and the sponsor's spouse, if living with the sponsor, when all four of the conditions set forth in (i) through (iv) below are met. Children and pregnant women who are exempt from the five-year bar pursuant to § 17.03(c)(6) are not subject to these provisions. The four conditions are as follows: (i) The sponsor has signed an affidavit of support on a form developed by the United States Attorney General as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) to conform to the requirements of §213A(b) of the INA; (ii) The noncitizen is lawfully admitted for permanent residence, and a five-year period of ineligibility for MABD following entry to the United States has ended; (iii) The noncitizen is not battered; and (iv) The noncitizen is not indigent, defined as unable to obtain food and shelter without assistance, because their sponsor is not providing adequate support. (2) The financial responsibility of a sponsor continues until the noncitizen is naturalized or credited with 40 qualifying quarters of coverage by the SSA (see (3) below for crediting of qualifying quarters). (3) A non-citizen is credited with the following qualifying quarters of coverage as defined under Title II of the Act: (i) Those worked by the non-citizen; (ii) Those worked by a parent of such non-citizen while the non-citizen was under age 18 unless the parent received any federal means-tested public benefit during the period for which the qualifying quarter of coverage is credited after December 31, 1996; (iii) Those worked by a spouse of the non-citizen while they were spouses, as long as the non-citizen remains the spouse or the spouse is deceased and the spouse did not receive any federal means-tested public benefit during the period for which the qualifying quarter of cover is credited after December 31,

	1996; (iv) For this purpose, federal means-tested benefits do not include: (A) Emergency medical assistance; (B) Short-term, non-cash, in-kind emergency disaster relief; (C) Assistance under the National School Lunch Act or the Child Nutrition Act of 1966; (D) Public health assistance for immunizations or testing and treatment of symptoms of communicable diseases not paid by Medicaid; (E) Payments for foster care and adoption assistance under parts B and E of Title IV of the Act, under certain conditions; (F) Programs, services or assistance specified by the Attorney General; (G) Programs for student assistance under Titles IV, V, IX, and X of the Higher Education Act of 1965, and Titles III, VII, and VIII of the Public Health Service Act; (H) Means-tested programs under the Elementary and Secondary Education Act of 1965; (I) Benefits under the Head Start Act; or (J) Benefits under the WIA.

29.04 Formation of the Medicaid group (10/01/2013, 13-12F)

(a) In general	The Medicaid group consists of individuals whose needs are included in the financial eligibility determination for MABD. The following paragraphs set forth the rules for determining membership in the Medicaid group. AHS compares countable income and resources of the financial responsibility group to maximums based on the size of the Medicaid group.
(b) Medicaid group for a single adult	A single adult requesting MABD, including MABD for long-term care services, is treated as a Medicaid group of one.
(c) Medicaid group for an adult with a spouse	(1) When spouses are living together, both the individual requesting MABD and the individual's spouse are considered members of the individual's Medicaid group, a Medicaid group of two, unless one of the exceptions specified in paragraph (d) of this subsection applies. This is true whether or not the individual's spouse is also requesting MABD. (2) Spouses are considered living together in any of the following circumstances: (i) Until the first day of the month following the calendar month of death or separation, when one spouse dies or the couple separates.

	(ii) When one spouse is likely to need MABD for long-term care services for fewer than 30 consecutive days. (iii) When the resources of the couple are assessed and allocated as of the date of initial application for MABD for long-term care services.
(d) Exceptions for an adult with a spouse	An adult requesting MABD with a spouse is treated as a Medicaid group of one in the following circumstances: (1) When one spouse is applying for MABD for long-term care services, they are considered a Medicaid group of one for: (i) The determination of initial and ongoing income eligibility; and (ii) Resource reviews of eligibility. (iii) AHS considers the spouses to be no longer living together as of the first day of the calendar month one spouse begins receiving MABD for long-term care services. This remains true even if the other spouse begins receiving MABD for long-term care services in a subsequent month. (2) When AHS determines the eligibility of one spouse for MABD when the other spouse already receives MABD for long-term care services in their home or community-based setting, each spouse is considered a Medicaid group of one. (3) When both spouses are admitted to the same residential care home, each spouse is considered a Medicaid group of one if the residential care home is designed for four or more residents. (4) When both spouses have been admitted to the same institution for long-term care in the same month and have lived there at least six months beginning with the first month following the month of their admission, for purposes of determining each spouse's eligibility for MABD for long-term care services, each spouse is considered a Medicaid group of one for the determination of their initial and ongoing income eligibility and resource reviews of eligibility. However, if it works to their advantage, they may be considered a Medicaid group of two. (5) When one spouse is receiving custodial care in their home, as defined in AABD Rule 2766, they are considered a Medicaid group of one.
(e) Medicaid group for a child	(1) An eligible child requesting MABD is treated as a Medicaid group of one. (2) When a parent and eligible child living together are both requesting MABD, they are treated as two Medicaid groups of one, if the parent is not living with a spouse. If the parent is living with a spouse, the parent and their spouse are treated as a Medicaid group of two and the child as a Medicaid group of one.

29.05 Deeming (10/01/2013, 13-12F)

(a) In general	MABD financial eligibility is based on the financial eligibility rules for the SSA's SSI program. Like SSI, the term "deeming" is used to identify countable resources and income from other people as belonging to the individual requesting MABD. When the deeming rules apply, it does not matter whether the resources or income of the other person are actually available to the individual.
(b) Categories of people whose income and resources are counted	(1) Resources and income from two categories of people may be counted as belonging to the individual. These people are members of the individual's financial responsibility group. AHS considers: (i) Spousal resources and income to decide whether it must deem some of it to the Medicaid group; and (ii) Parental resources and income for an eligible child requesting MABD to decide whether it must deem some of it to the Medicaid group. (2) § 29.10 specifies the resources counted when determining MABD financial eligibility. (3) § 29.14 specifies the income counted when determining MABD financial eligibility.

29.06 Temporary absences and deeming rules (10/01/2013, 13-12F)

(a) Effect of temporary absence	For purposes of deeming, during a temporary absence, the absent person continues to be considered a member of the individual's household.
(b) Definition of temporary absence	A temporary absence occurs when the individual or their ineligible spouse, parent, or an ineligible child leaves the household but intends to and does return in the same month or the next month.
(c) Treatment of absences due to schooling	An eligible child requesting MABD is considered temporarily absent from their parent's (or parents') household if they are away at school but come home on some weekends or lengthy holidays and are subject to the control of their parent(s).
(d) Absences related to active duty assignment	If the individual's ineligible spouse or parent is absent from the household due solely to a duty assignment as a member of the armed forces on active duty, that person is considered to be living in the same household as the individual, unless evidence indicates that the individual's spouse or parent should no longer be considered to be living in the same household. When such evidence exists, AHS stops deeming their resources and income beginning with the month after the spouse or parent no longer lived in the same household.

29.07 Resources (10/01/2013, 13-12F)

(a) In general	(1) Resources are cash and other property, real or personal, that an individual (or their spouse, if any):

	(i) Owns; (ii) Has the right, authority or power to convert to cash (if not already cash); and (iii) Is available for their support and maintenance. (2) Resources are treated in different ways depending on the rules of the coverage group involved and the type and liquidity of the resource. (3) Resources are counted based upon their availability and the ease with which they can be converted into cash. Availability is often affected when more than one person has an ownership interest in the same resource. (4) Resource limits vary depending on the type of category and services, and the size of the Medicaid group. Resource eligibility for each coverage group is determined by comparing the resources of the financial responsibility group to the resource limit based on the size of the Medicaid group. Resource maximums are specified in Vermont's Medicaid Procedures Manual. (5) All resources of the members of the financial responsibility group must be counted except those specifically excluded. See § 29.08 for the resource exclusion rules. (6) Equity value as well as availability is considered when determining the amount of a resource that counts. In general, equity value means the price an item can be reasonably expected to sell for on the local open market minus any encumbrances. See § 29.09 for the general rules on valuing countable resources.
(b) Types of resources	This paragraph describes some of the kinds of resources the availability of which are considered in determining MABD eligibility. The descriptions are divided into two categories – nonliquid resources and liquid resources. Except for cash, any kind of property may be either liquid or nonliquid. The liquidity (or nonliquidity) of a resource has no effect on the resource's countability for MABD eligibility purposes.
(1) Definition: Nonliquid resources	A nonliquid resource means property that is not cash, including real and personal property that cannot be converted to cash within 20 work days. Real property, life estates, life insurance and burial funds, described below, are some of the more common kinds of nonliquid resources. Certain other noncash resources, though they may occasionally be liquid, are nearly always nonliquid. These include, but are not limited to, household goods and personal effects, vehicles, livestock, and machinery.
(i) Real property	Land and generally whatever is erected, growing on, or affixed to land. See § 29.08(a) for information on the resource exclusion of real property.
(ii) Life estates	Life estate means a legal arrangement entitling the owner of the life estate (sometimes referred to as the "life tenant") to possess, rent, and otherwise profit from real or personal property during their lifetime. The owner of a life estate sometimes may have the right to sell the life estate,

	but does not normally have future rights to the property. Ownership of a life estate may be conditioned upon other circumstances, such as a new spouse. The document granting the life estate includes the conditions for the life estate and the right of the owner of the life estate to sell or bequeath it, if these property rights were retained. See § 29.08(a)(6) for information on the resource exclusion of life estates.
(iii) Life insurance	A contract that provides for its purchaser to pay premiums to the insurer, who agrees to pay a specific sum to a designated beneficiary upon the death of the insured. Life insurance is usually sold by an insurance company but may also be sold by other financial institutions, such as brokerage firms. See § 29.08(b) for information on the resource exclusion of life insurance. The following are terms related to life insurance:
(A) Face value	The amount the life insurance policy pays the designated beneficiary upon the death of the insured.
(B) Term life insurance	A life insurance policy that does not accumulate any cash value as premiums are paid.
(C) Whole life insurance (sometimes called ordinary life, limited payment or endowment insurance)	A life insurance policy that accumulates cash value as premiums are paid. It may also pay periodic dividends on this value when all premiums have been paid. These dividends may be paid to the owner, or they may be added to the cash surrender value (defined below) of the policy.
(D) Cash surrender value (CSV) of whole life insurance	The amount the owner would receive if the life insurance policy were terminated before the insured dies. It is a form of equity that accumulates over time as life insurance premiums are paid. The owner may borrow against the CSV according to the terms of the policy. A loan against a policy reduces its CSV.
(E) Group policy	A life insurance policy that is usually issued through a company or organization insuring the participating employees or members and, perhaps, their families. The group policy may be paid partially by the employer. A group insurance policy generally has no CSV.
(iv) Burial Funds	(A) Any separately-identifiable fund clearly designated for burial expenses (which includes expenses for burial spaces, items related to burial spaces and services related to burial spaces) through the title to the fund or by a sworn statement provided. Burial funds include contracts, trusts, or other agreements, accounts, or instruments with a cash value. Some burial funds include accumulated interest, and the value of some burial funds may change through time (e.g., when the fund consists of bonds). See § 29.08(c) for information on the resource exclusion of burial funds. (B) The cash value of life insurance policies may also be treated as a burial fund if owned by a person whose income and resources are considered in determining an individual's MABD eligibility and if designated as specified above. (C) For the purposes of determining MABD eligibility, burial spaces, if not fully paid, are considered burial funds and include burial plots, gravesites, crypts, mausoleums, caskets,

	urns, and other repositories customarily and traditionally used for the deceased's bodily remains. Items related to burial spaces include, but are not limited to, vaults, headstones, markers, plaques, and burial containers for caskets. Services related to burial include, but are not limited to, embalming, opening and closing of the gravesite, and care and maintenance of the gravesite, sometimes called an endowment or perpetual care.
(2) Definition: Liquid resources	A liquid resource means cash or other property that can be converted to cash within 20 work days. Accounts in financial institutions; retirement funds; stocks, bonds, mutual funds, and money market funds; annuities; mortgages and promissory notes; and home equity conversion plans, described below, are some of the more common kinds of liquid resources.
(i) Accounts in financial institutions	(A) Accounts in depository financial institutions such as banks and credit unions include, but are not limited to, savings accounts, checking accounts, joint fiduciary accounts, and certificates of deposit. Depository institutions may also manage mutual fund and money market fund accounts for depositors. (B) Nondepository financial institutions, such as brokerage firms, investment firms, and finance companies, also offer certificates of deposits as well as accounts and services related to the purchase and sale of stocks, bonds, mutual funds, money market funds, and other investments.
(ii) Stocks, bonds, and funds	(A) Legal instruments authenticating an investment, such as stocks, bonds, mutual funds, and money market funds pay interest at specified intervals, sometimes pay dividends, and are convertible into cash either on demand or at maturity. (B) U. S. savings bonds are obligations of the federal government. Unlike other government bonds, they are not tradable in the usual sense through brokers and security traders and, as described below, the value of the bond depends on its type. See § 29.08(i)(11) for information on the resource exclusion of U.S. savings bonds. (I) Series E and EE bonds are sold at one half of their face value and increase in redemption value as interest accrues. (II) Series I bonds are sold at their full face value and increase in redemption value as interest accrues. (III) Series H and HH bonds are sold at their full face value and do not increase in value. Instead, they pay interest to the owner each six months.
(iii) Annuities	A contract reflecting payment to an insurance company, bank, charitable organization, or other registered or licensed entity; it may also be a private contract between two parties. There are two phases to an annuity: An accumulation phase and a pay-out phase, and their countability as a resource for MABD eligibility purposes is impacted by the phase the annuity is in (see below). Annuities vary in how they accumulate and pay out money. Annuities may accumulate money by payment of a single

	lump sum or by payments on a schedule, which accumulate interest over time. Once an annuity has reached its pay-out phase (often referred to as "matured"), money is paid to the beneficiary according to the terms of the annuity contract.
(A) Parties to an annuity	(I) There are always two parties to an annuity: The writer of the annuity, usually an insurance carrier or charitable organization, and the purchaser who owns the annuity (sometimes referred to as the annuitant). There may also be a third party to the annuity if someone other than the owner is the annuitant. (II) In addition, annuities also name a beneficiary. The beneficiary is the person who will be paid a regular stream of income from the annuity in equal payments. Anyone can be a beneficiary, including but not limited to, the owner of the annuity, a spouse, dependent, trust, estate, commercial entity, proprietorship, or charitable organization. (III) Beneficiaries may be revocable or irrevocable. A revocable beneficiary can be changed by the owner of the annuity at any time. An irrevocable beneficiary can be changed only by the written permission of that beneficiary. (IV) In addition to the beneficiary described in (II) above, annuities can also provide for a contingent beneficiary or residual beneficiary. A contingent or residual beneficiary will receive annuity payments upon the occurrence of a specified condition.
(B) Types of annuities	There are many types of annuities. For MABD purposes, AHS considers whether annuities of any type are available as a liquid resource. Since annuities are trust-like instruments, terminology similar to trusts is used when it describes the availability of cash from annuities.
(I) Annuity naming revocable beneficiaries	An annuity that names revocable beneficiaries is available to the owner because the owner can change the beneficiary. This type of an annuity is considered a countable resource for purposes of the owner's MABD eligibility. See subsection 29.09(d)(1) for information on how to value an annuity when it is a countable resource.
(II) Annuity that can be surrendered, cashed in or assigned	An annuity that can be surrendered, cashed in or assigned by the owner is presumed to be a revocable annuity. A revocable annuity is considered a countable resource for purposes of the owner's MABD eligibility. An annuity is presumed to be revocable when the annuity contract is silent on revocability. See § 29.09(d)(1) for information on how to value an annuity when it is a countable resource.
(III) Annuity owned by someone other than the applicant or spouse	An annuity is an unavailable resource for purposes of MABD eligibility when the owner of the annuity is not the individual requesting MABD or the individual's spouse, or the individual or their spouse has abandoned all rights of ownership. However, if payments from the annuity are being made to the individual (or spouse), those payments may be counted as income to the individual (or spouse).

(C) Standard of review	(I) For the purposes of MABD eligibility: (i) An annuity in its accumulation phase is considered a countable resource of the owner because it can be liquidated or sold by the owner. See § 29.09(d)(1) for information on how to value an annuity when it is a countable resource. (ii) An annuity in its pay-out phase may be excluded as a resource of the owner if certain criteria are met. See § 29.08(d)(1) for information on the resource exclusion of an annuity. (II) For purposes of MABD for long-term care, an annuity purchased, or subjected to certain transactions, by an individual or their spouse on or after February 6, 2006, is subject to transfer review. See § 25.03(h) for information on transfer analysis of annuities.
(iv) Mortgages	(A) The pledging of real estate or conveyance of an interest in land to a creditor as security for repayment of a debt. (B) A mortgage owned by an individual, as the creditor, may be excluded as a resource if certain criteria are met. See § 29.08(d)(2) for information on the resource exclusion of a mortgage. If a mortgage is a countable resource of the individual, see § 29.09(d)(5) for information about the valuation of the mortgage.
(v) Promissory notes	(A) Written promises to pay a certain sum of money to a certain person, the bearer, upon demand or on a specified date. (B) A promissory note owned by an individual, as the bearer, may be excluded as a resource if certain criteria are met. See § 29.08(d)(2) for information on the resource exclusion of a promissory note. If a promissory note is a countable resource of the individual, see § 29.09(d)(5) for information about the valuation of the promissory note.
(vi) Retirement funds	Any resource set aside by a member of the individual's financial responsibility group to be used for self-support upon their withdrawal from active life, service, or business. Retirement funds include but are not limited to IRAs, Keogh plans, 401K plans, pensions, mutual funds, stocks, bonds, securities, money market accounts, whole life insurance, and annuities. The value of a retirement fund is the amount of money that can currently be withdrawn from the fund. See § 29.08(i)(5) for information on the resource exclusion of retirement funds. See § 29.08(f) for information on the exclusion of early withdrawal and surrender penalties.
(vii) Health savings accounts (HSAs)	Accounts used to set aside funds to meet medical expenses. Unless the individual can demonstrate that the funds in their HSA are not available to them, the HSA is a countable resource.

(c) Resources managed by a third party	Resources, liquid and nonliquid, managed by a third party include, but are not limited to, trusts, guardianship accounts, and retirement funds. Resources of a member of the financial responsibility group managed by a third party (e.g., trustee, guardian, conservator, or agent under a power of attorney) are considered available to the member as long as the member can direct the third party to dispose of the resource or the third party has the legal authority to dispose of the resource on the member's behalf without the member's direction.
(1) Definitions	
(i) Guardian	A person or institution appointed by a court in any state to act as a legal representative for another person, such as a minor or a person with disabilities. Guardianship funds are presumed to be available for the support and maintenance of the protected person. That person may rebut the presumption of the availability of guardianship funds by presenting evidence to the contrary, including, but not limited to, restrictive language in the court order establishing the account or in a subsequent court order regarding withdrawal of funds.
(ii) Power of attorney	A written document signed by a person giving another person authority to make decisions on behalf of the person signing it, according to the terms of the document. Vermont law requires a power of attorney to be executed according to certain formalities, such as being signed, witnessed, and acknowledged. Funds managed by an agent under a power of attorney are not property of the agent and cannot be counted as resources of the agent.
(iii) Representative payee	An individual, agency, or institution selected by a court or the SSA to receive and manage benefits on behalf of another person. A representative payee has responsibilities to use these payments only for the use and benefit of that person, to notify the payer of any event that will affect the amount of benefits the person receives or circumstances that would affect the performance of the representative payee's responsibilities, and account periodically for the benefits received. Funds managed by a representative payee are not property of the representative payee and cannot be counted as resources of the representative payee.
(iv) Trust	A trust is a property interest where property is held by an individual or an entity (called a "trustee") subject to a fiduciary duty to use the property for the benefit of another person (the "trust beneficiary"). A trust includes a legal instrument or device that is similar to a trust but may not be called a trust. See § 29.08(e) for information on resource exclusion of trusts. The following are terms related to trusts:
(A) Grantor (also known as settler or trustor)	(I) The person who transfers liquid or nonliquid property to another person or entity (the "trustee"), with the intention that it be held, managed, or administered by the trustee for the benefit of one or more persons (the "grantees") In some cases, the grantor is named as a grantee. (II) A person is considered the grantor of a trust if: (i) The assets of the person were used to form all or part of the principal of the trust; and

	(ii) One of the following established the trust: (A) The person; (B) Another person, court, or administrative body, with legal authority to act in place of or on behalf of the person; or (C) Another person, court, or administrative body, acting at the direction of or upon the request of the person.
(B) Trustee	The person or entity (such as a bank or insurance company) that holds, manages, or administers trust property for the benefit of the trust's grantee(s). In most cases, a trustee does not have the legal right to use the trust property for their own benefit. Some, but not all, trusts grant discretion to the trustee to use judgment as to when or how to handle trust principal or trust income. A trust may provide reasonable compensation to the trustee for managing the trust as well as reimbursement for reasonable costs associated with managing the trust property.
(C) Grantee (also known as beneficiary)	The person or entity that receives the benefit of a trust. A trust can have more than one grantee at the same time; it can also have different grantees under different circumstances.
(D) Trust income (also known as trust earnings)	Monies earned by the trust property. It may take various forms, such as interest, dividends, or rental payments. These amounts may be countable unearned income to any person legally able to use them for their support and maintenance.
(E) Trust principal (also known as trust corpus)	The property that the grantor transfers to the trustee for the benefit of the grantee(s).
(F) Trust property	The sum of the trust principal and the trust income.
(G) Residual beneficiary	The person or entity named in the trust to receive the trust property upon termination of the trust.
29.08 Excluded resources (10/01/2013, 13-12F)	
	This subsection specifies the resources whose value is excluded in determining MABD eligibility.
(a) Real property	
(1) Home and contiguous land	
(i) Definition	Home means the property in which an individual resides and has an ownership interest and which serves as the individual's principal place of residence. This property includes the shelter in which the individual resides, the land on which the shelter is located, related outbuildings, and surrounding property not separated from the home by intervening property owned by others. Public rights of way, such as roads that run through the surrounding property and separate it from the home, will not affect the exemption of the property. The home includes contiguous land

	and any other nonresidential buildings located on the contiguous land that are related to the home.
(ii) Exclusion	(A) Except for MABD for long-term care services, a home is excluded as a resource, regardless of its value. (B) For MABD for long-term care services, the home is considered a resource when the equity in the home is substantial. See Vermont's Medicaid Procedures Manual for the current substantial home equity limit; see § 29.09(d)(6) for information on exceptions to the application of the substantial home equity limit. The home may also be considered as a resource when determining whether the home has been transferred and should be subject to a penalty period (see § 25.00) (C) The home exclusion applies even if the owner is making an effort to sell the home. (D) The home exclusion also applies if the owner is absent from the home due to institutionalization, provided they have not placed the home in a revocable trust, and any one of the following three conditions is satisfied: (I) The owner intends to return to the home even if the likelihood of return is apparently nil. (II) The owner has a spouse or dependent relative residing in the home. Dependent relative in this context applies to: (i) Any kind of dependency (medical, financial, etc.); and (ii) A relationship to the owner that is one of the following: child, stepchild, or grandchild; parent, stepparent, or grandparent; aunt, uncle, niece, or nephew; brother or sister, stepbrother or stepsister, half brother or half sister; cousin; or in-law. (III) The owner has a medical condition that prevented them from residing in the home before institutionalization. (E) Unless one of the exceptions listed in (D) applies, the home becomes a countable resource when the owner moves out of the home without the intent to return, because it is no longer their principal place of residence. (F) Temporary absences, such as for hospitalization or convalescence with a relative, do not affect the determination of the owner's principal place of residence.
(2) Proceeds from the sale of an excluded home	(i) Proceeds from the sale of a home is excluded to the extent that the owner intends to use the proceeds and, in fact, uses or obligates them to purchase or construct another home within three months of the date the proceeds are received. (ii) Use of proceeds from the sale of a home to pay costs of another home will be excluded only if the other costs are paid within three months of the sale of the home. Such costs are limited to the down payment, settlement costs, loan processing

	fees and points, moving expenses, necessary repairs to or replacements of the new home's structure or fixtures (e.g., roof, furnace, plumbing, built-in appliances) identified and documented prior to occupancy, and mortgage payments for the new home. (iii) The value of a promissory note or similar installment sales contract constitutes a "proceed." Other proceeds consist of the down payment and the portion of any installment amount constituting payment against the principal. These are also excluded if used within 3 months to make payment on the replacement home. (iv) When all of the proceeds are not timely reinvested as specified above, the portion of the proceeds retained by the owner are combined with the value of the promissory note or installment sales contract and counted as a resource beginning with the month following the month the note or contract is executed. If the entire proceeds are fully reinvested in a replacement home at a later date, the value of the note or contract and reinvested proceeds are excluded beginning with the month after the month in which they are reinvested, but any proceeds not reinvested as specified above remain a countable resource until fully reinvested.
(3) Real property up-for-sale	(i) Real property is excluded from being a countable resource as long as the owner verifies that they are making reasonable efforts to sell it. Reasonable efforts to sell property means taking all necessary steps to sell it for fair market value in the geographic area covered by the media serving the area in which property is located, unless the owner is prevented by circumstances beyond their control from taking these steps. (ii) The steps considered necessary to sell the property depend on the method of sale. An owner may choose to list the real property with a real estate agent or undertake to sell it themselves. (iii) If the owner chooses to list the property with a real estate agency, they must take the necessary step of listing it and cooperating with the real estate agent's efforts to sell it. (iv) If the owner chooses to sell the property without an agent, they must take all of the following necessary steps: (A) Advertise the property in at least one of the appropriate local media continuously; (B) Place a "For Sale" sign on the property continuously, unless prohibited by zoning regulations; (C) Conduct open houses or otherwise show the property to prospective buyers; and (D) Attempt any other appropriate methods of sale. (v) If any prospective buyer makes a reasonable offer for the property, the owner must accept it or demonstrate why it was not a reasonable offer. Any offer of at least two-thirds of the

	most recent estimate of the property's fair market value is considered a reasonable offer. (vi) Fair market value means: (A) A certified appraisal; or (B) An amount equal to the price of the property on the open market in its locality at the time of the transfer or contract for sale, if earlier.
(4) Home equity conversion plans	
(i) Definition	Home equity conversion plans are financial instruments used to secure loans with real property as collateral. Home equity conversion plans include reverse mortgages, reverse annuity mortgages, sale-leaseback arrangements, time-sale agreements, and deferred payment loans.
(ii) Exclusion as a resource in month received	In the month of receipt, funds an owner of the real property receives from any home equity conversion arrangements on their real property is excluded as a resource.
(5) Jointly-owned real property	
(i) Exclusion due to joint owner's refusal to sell	(A) An owner's interest in jointly-owned real property is excluded as a resource as long as: (I) At least one of the other joint owners refuses to sell the property; and (II) The joint ownership was created more than 60 months before the date of the MABD application. (B) The addition of a new joint owner (or joint owners) to a property is considered as the creation of a new joint ownership. The new joint ownership will be evaluated as a countable resource under § 29.09(d)(3) if the addition of the new joint owner was made within 60 months of the date of the MABD application.
(ii) Exclusion due to undue hardship	An owner's interest in jointly-owned real property is excluded as a resource if the sale of the property would cause the other joint owner (or owners) undue hardship due to loss of housing. Undue hardship would result when: (A) The property serves as the principal place of residence for one or more of the other joint owners; (B) Sale of the property would result in loss of that residence; and (C) No other housing would be readily available for the displaced other owner.
(6) Life estates	
(i) Treatment of life estate	For a life estate ownership in real property created on or after July 1,

interest created on or after July 1, 2002	2002: (A) The value of the life estate is excluded as a resource when the life estate owner does not retain the power to sell or mortgage the real property. For purposes of eligibility for MABD for long term care services however, the life estate may be considered as a resource when determining whether it has been transferred and should be subject to a penalty period (see § 25.00). (B) When the life estate owner retains the power to sell or mortgage the real property, including any remainder interest, the value of the life estate is excluded only if the life estate is an interest in the life estate owner's home (§ 29.08(a)(1)). Otherwise, the value of the life estate is counted. For this purpose, the value of the life estate includes the value of the remainder interest. (C) When an individual transfers their home and retains a life estate with the power to sell or mortgage the property, the transfer is not subject to a transfer penalty analysis under § 25.00. In this situation, no transfer has occurred because the individual's ownership interest in the home has not been reduced or eliminated.
(ii) Treatment of life estate interest created before July 1, 2002	For a life estate ownership created before July 1, 2002: (A) When the life estate owner retains the power to sell the real property, including any remainder interest, the value of the life estate is excluded only if the life estate is excludable on another basis, such as because it is real property producing significant income. Otherwise, the value of the life estate is counted. For this purpose, the value of the life estate includes the value of the remainder interest. (B) The life estate ownership is excluded as a resource when the life estate owner does not retain the power to sell the real property.
(7) Income-producing real property	(i) *Non-business real property.* Non-business real property is excluded as a resource if the property produces significant income to the owner. Real property is considered to produce significant income if it generates at least 6 percent of its fair market value in net annual income after allowable expenses related to producing the income are deducted. (ii) *Real* property *used in a trade or business.* Real property is *excluded* as a resource if the real property is essential to the owner's self-support and used by the owner in a trade or business. For purposes of this exclusion, the property must be in current use in the type of activity that qualifies it as essential.
(8) Goods for home consumption	Non-business real property is excluded as a resource of the owner when used by the owner to produce goods for only home consumption (e.g., a garden plot used to raise vegetables to be eaten at home or a wood lot used to provide fuel to heat the home). When real property is used to produce goods for both home consumption and income production, only

	the part used to produce goods for home consumption is excluded. The part of the property used for income production is evaluated for exclusion under (7) above.
(b) Insurance	
(1) Exclusion of life insurance	
(i) Whole life insurance	(A) If the combined face values of the whole life insurance policies owned by any one member of the financial responsibility group do not exceed $1500, the cash surrender values of the policies are excluded. (B) If the combined face values exceed $1500, the cash surrender values, excluding any amounts up to $1500, and all dividend additions are a countable resource.
(ii) Term life insurance	Regardless of its face value, a term life insurance policy is not a countable resource.
(2) Long-term care insurance partnership	
(i) Definition: Qualified State Long-Term Care Insurance Partnership	A state plan amendment that provides for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made under a long-term care insurance policy (including a certificate issued under a group insurance contract), but only if: (A) The policy covers an insured who, at the time coverage under the policy first becomes effective, is a resident of such State or of a State that maintains a Qualified Long-Term Care Insurance Partnership; (B) The policy is a qualified long-term care insurance contract within the meaning of § 7702B(b) of the Code; (C) The policy provides some level of inflation protection as set forth in regulations promulgated by the Department of Financial Regulations (DFR); (D) The policy satisfies any requirements of State or other applicable law that apply to a long-term care insurance policy as certified by the DFR; and (E) The issuer of the policy reports: (I) To the Secretary of HHS such information or data as the Secretary may require; and (II) To the State, the information or data reported to the Secretary of HHS (if any), the information or data required under the minimum reporting requirements developed under § 2(c)(1) of the State Long-Term Care Partnership Act of 2005, and such additional information or data as the State may require.

(ii) Exclusion	(A) Subject to approval by CMS, assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a qualified State long-term care insurance partnership policy are excluded. (B) This section is further contingent on the passage of changes to 33 VSA § 1908a necessary to bring the Vermont statute on Long-Term Care Partnership Insurance into conformance with the requirements of § 6021 of the federal Deficit Reduction Act of 2005.
(c) Burial Funds Exclusion	
	(1) For any person whose income and resources are considered in determining MABD eligibility, up to $10,000 of burial funds are excluded, as long as the person shows that the funds are designated for burial expenses through the title to the funds or by a sworn statement provided. The funds must be separately identifiable and not commingled with other funds. (2) Burial funds may be excluded as of the first day of the month in which the person whose income and resources are considered in determining MABD eligibility established it. Interest and appreciation accrued on burial funds are excluded if the funds have been left to accumulate. (3) The value of certain burial spaces may also be excluded under the allowable limit of $10,000 for each person whose income and resources are considered in determining MABD eligibility. Such spaces must be held for the burial of a member of the individual's immediate family. For this purpose, the immediate family includes the individual's spouse, children, brothers, sisters, and parents. (4) Irrevocable burial trusts established prior to July 1, 2002 and funded in excess of $10,000 are excluded up to the value of the trust as of June 30, 2002.
(d) Other income-producing resources	
(1) Annuities	(i) An annuity is excluded as a resource of an individual requesting MABD or of their spouse if the annuity is in its pay-out phase and meets all of the following conditions: (A) Has no beneficiary (or payee) other than the individual requesting MABD or their spouse; (B) Provides for payments to the beneficiary in equal intervals and equal amounts; (C) Does not exceed the life expectancy of the beneficiary as determined by using the annuity tables published by the Office of the Chief Actuary of the SSA (http://socialsecurity.gov/OACT/STATS/table4c6.html) and set

	forth in Vermont's Medicaid Procedures Manual; (D) Returns to the beneficiary at least the amount used to establish the annuity contract and any additional payments plus any earnings, as specified in the contract; and (E) Except as provided in (ii) below, does not pay anyone else, as residual beneficiary, in the event the beneficiary dies before the payment period ends. (ii) An annuity will also be considered to meet the requirements of (A) and (E) of (i) above if the individual or their spouse, as the owner of the annuity, elects to designate Vermont Medicaid as the primary residual beneficiary up to the amount of Medicaid payments made on behalf of the individual (or their spouse), and names a contingent residual beneficiary other than the individual or their spouse to receive any surplus after Vermont Medicaid is paid.
(2) Promissory notes and other income-producing resources	(i) A promissory note or similar resource that produces income is excluded as a resource of an individual requesting MABD eligibility or of their spouse if: (A) It meets the requirements in paragraph (1)(A) through (E) above; or (B) The owner owned a nonnegotiable or nonassignable promissory note executed before September 1, 2005 and they can expect to receive the full fair market value of the resource within their expected lifetime, as determined by using the annuity tables published by the Office of the Chief Actuary of the SSA (http://socialsecurity.gov/OACT/STATS/table4c6.html) and set forth in Vermont's Medicaid Procedures Manual. (ii) All other promissory notes and similar resources that produce income are evaluated for whether they are a countable resource as specified in § 29.09(d)(5) or, for purposes of MABD for long-term care services, subject to a transfer penalty as specified in § 25.00. (iii) For purposes of MABD for long-term care services, promissory notes and similar income-producing resources that do not meet the exclusion criteria under this paragraph (d)(2) and are determined to have fair market value are considered either as a countable resource or subject to a transfer penalty, in the discretion of AHS.
(e) Excluded trusts	
(1) In general	(i) A trust is excluded as a resource if the member of the financial responsibility group is the grantor or grantee of the trust and cannot revoke the trust or receive trust property, whether or not the trustee exercises their full discretion. Trust property is also excluded as a resource when the grantor is a member of the financial responsibility group and establishes a trust by will (often referred to as a "testamentary trust"). (ii) The following trust property is excluded as a resource when

either the grantor or the grantee is a member of the financial responsibility group:

(A) Trust property in a trust established prior to April 7, 1986, for the sole benefit of a person who is developmentally disabled residing in an ICF-DD.

(B) Trust property in a trust for which the grantee is a disabled child under the decision in Sullivan v. Zebley, 493 U. S. 521 (1990).

(C) Trust property or any portion of trust property that cannot be made available to the member of the financial responsibility group, either through full exercise of the trustee's discretion under the terms of the trust or through revocation of the trust by a member of the financial responsibility group.

(D) Trust property in a trust established by persons other than the individual or the individual's spouse (known as a third-party trust) unless the terms of the trust permit the individual (or their spouse) to revoke the trust or to have access to it without trustee intervention.

(E) Trust property in an irrevocable trust, including a home placed in an irrevocable trust by an institutionalized individual who intends to return to it, from which no payment under any circumstances could be made to the individual.

(F) A special needs trust that contains the assets of an individual under the age of 65 who does or would meet the SSI criteria for disability, and meets all of the criteria below:

(I) Was established through the actions of a parent, grandparent, or legal guardian of the disabled individual, or by a court;

(II) Was established for the sole benefit of the disabled individual which means that no person or entity except the disabled individual can benefit from the trust in any way, until after the death of the disabled individual and then not before Vermont Medicaid receives sums owed under the payback provision under (III) below; and

(III) Includes a payback provision which requires that, upon the death of the disabled individual, any amounts remaining in the trust will first be paid to Vermont Medicaid in an amount equal to the total Medicaid payments made on behalf of the disabled individual.

(G) A pooled trust that contains the assets of an individual who does or would meet the SSI criteria for disability, and meets all of the criteria below:

(I) Was established and administered by a non-profit association;

(II) Maintains a separate account for the disabled individual, but assets are pooled for investing and management

	purposes; (III) The separate account was established for the sole benefit of the disabled individual; (IV) The account was established through the actions of the disabled individual, their parent, grandparent or legal guardian, or by a court; and (V) The trust contains a pay-back provision which requires that to the extent any amounts in the separate account for the disabled individual upon their death are not retained by the trust, such amounts will first be paid to Vermont Medicaid in an amount equal to the total Medicaid payments made on behalf of the disabled individual. (VI) Any asset of the disabled individual that is added to the trust after the disabled individual reaches the age of 65 may be subject to transfer penalty (see § 25.00) for purposes of the disabled individual's eligibility for MABD for long-term care services. (iii) In the case of a trust with more than one grantor, these exclusions apply only to that portion of the trust attributable to the income or resources of a member of the financial responsibility group. In the case of a trust with more than one grantee, the exclusions apply only to that portion of the trust available for the benefit of a member of the financial responsibility group.
(2) Trusts excluded due to hardship	(i) Trust property that has not been distributed may be excluded if counting it as a resource would cause undue hardship to a grantor or grantee who is a member of the financial responsibility group. (ii) Undue hardship includes situations in which a member of the financial responsibility group or someone in the member's immediate family would be forced to go without life-sustaining services because the trust property could not be made available to pay for the services. For this purpose, the immediate family includes the member's spouse, children, brothers, sisters, and parents. (iii) The following situations also would cause undue hardship: (A) Funds can be made available for medical care only if trust property is sold, and this property is the sole source of income for the member or someone in the member's immediate family; and (B) Funds can be made available for medical care only if income-producing trust property is sold and, as a result of this sale, the member or someone in the member's immediate family would qualify for SSI, Reach Up, AABD, General Assistance, 3SquaresVT, or another public assistance program requiring a comparable showing of financial need. (iv) Undue hardship does not exist when application of the trust

	regulations does not cause risk of serious deprivation to the member of someone in the member's immediate family. (v) An individual claiming undue hardship must submit a written request and any supporting documentation. Claims of undue hardship are forwarded to the DCF commissioner's designee for evaluation. Required documentation from the individual can include, but is not limited to, the following: (A) A statement from the individual's attorney, if one was involved; (B) Verification of medical insurance coverage and statements from medical providers relative to usage not covered by the insurance; or (C) A statement from the trustee of the trust. (vi) When application of trust provisions are waived because they would cause the individual undue hardship, only amounts actually distributed from the trust and held for more than a month are counted as a resource. (vii) Request for consideration of undue hardship does not limit an individual's right to appeal denial of eligibility for any reason, including the determination of undue hardship.
(f) Early withdrawal and surrender penalties	(1) Early withdrawal penalties and surrender fees assessed by a financial institution are excluded to the extent that they reduce the value of a countable resource that has been liquidated. Examples of resources to which this exclusion applies are retirement funds, annuities, bonds, and certificates of deposit. (2) Income tax withholding and tax penalties for early withdrawal are not excluded.
(g) Jointly-owned accounts	A jointly-owned account in a financial institution is excluded as a resource only if the owner rebuts the presumption of availability by: (1) Submitting a statement, along with a corroborating statement (or statements) from the other joint owner (or owners) of the account, regarding who owns the funds in the joint account, why there is a joint account, who has made deposits to and withdrawals from the account, and how withdrawals have been spent; (2) Submitting account records showing deposits, withdrawals, and interest, if any, in the months for which ownership of funds is at issue; and (3) Taking one of the following two actions: (i) If the member of the financial responsibility group owns none of the funds in the account, correcting the account title to show that the member is no longer a co-owner of the account; or (ii) If the member owns only a portion of the funds in the account, separating the funds owned by other account owners from the

	member's funds and correcting the account title on the member's funds to show they are solely owned by the member.
(h) Fiduciary for a joint fiduciary account[18]	
(1) Definition: Joint fiduciary account	A deposit in a financial institution in the name of an owner naming one or more fiduciaries. The owner makes a clear statement about how the money can be used, and the fiduciary is required to follow those instructions and keep track of how the money is spent.
(2) Exclusion	When an individual owns a joint fiduciary account, it is counted as a resource. When an individual is designated a fiduciary of a joint fiduciary account, the joint fiduciary account is an excluded resource for the fiduciary.
(i) Other excluded resources	
(1) Household goods, personal effects and other personal property	(i) Except as provided in (ii), home furnishings, apparel, personal effects, and household goods are excluded as resources. Tools, equipment, uniforms and other nonliquid property required by the owner's employer or essential to the owner's self-support are also excluded as resources. (ii) Items an owner acquires or holds because of their value or as an investment are not excluded.
(2) Vehicles	(i) Except as provided in (ii), all automobiles are excluded as resources. Other vehicles, such as trucks, boats, and snowmobiles, are excluded only if they are used to provide necessary transportation (i.e., an automobile is unavailable or cannot be used to transport the aged, blind or disabled individual). (ii) Automobiles or other vehicles an owner acquires or holds because of their value or as an investment are not excluded.
(3) Independent living contracts	
(i) Definitions	
(A) Contracts for medical care, assistive technology devices, and home modifications	Any written agreement, contract, or accord (including modifications) for reasonable and necessary medical care, assistive technology devices, or home modifications not covered by Medicare, private insurance, or Medicaid and determined by AHS to be needed to keep an individual at home and out of a skilled nursing facility.
(B) Medical care	Care not covered under AHS's Choices for Care program, including but not limited to, general supervision when required by the cognitive impairment of the individual and/or unstable medical condition that requires monitoring of the individual.
(C) Assistive technology	Any item, piece of equipment or product system whether acquired commercially off the shelf, modified, or customized, to increase, maintain,

[18] 8 VSA § 14212

devices	or improve the individual's functional capabilities.
(D) Home modifications	Physical adaptations to the individual's home that ensure the health and welfare of the individual, or that improve the individual's ability to perform activities of daily living or instrumental activities of daily living.
(ii) Exclusion	Resources set aside under a contract or contracts for medical care, assistive technology devices, or home modifications are considered to be available resources unless all of the following criteria are met: (A) The contract is in writing and signed before any services are provided; (B) The funds, not to exceed a total of $30,000, are held in a separate bank account from other resources in the sole name of the individual applying for MABD; (C) Any amounts due are paid after the services are rendered; (D) The payments for: (I) Medical care or assistive technology services do not exceed $500 per month; and (II) Home modifications do not exceed a one-time expenditure of $7,500; (E) The payments to nonlicensed individuals or providers do not exceed the fair market value of such services being provided by similarly situated and trained nonlicensed individuals, not to exceed the amount paid under AHS's Choices for Care program (see http://www.ddas.vermont.gov/ddas-publications/publications-ddas/service-codes-rates-sfy-03-06-13). (F) Periodic accountings, as requested by AHS, must be provided specifying the amount of each expenditure, who was paid, the service given, and the number of hours and dates of service covered; (G) The individual has the power to modify, revoke or terminate the contract for care; (H) The contract ceases upon the death of the individual. It also ceases upon the individual's admission to an institution for long term care services for more than 45 days if not eligible for the home upkeep deduction under § 24.04(d), or 6 months if eligible for the deduction. In addition, revocation or termination of the contract ceases the agreement. (I) Upon cessation of the contract as specified above, any remaining balance of funds shall be treated as (I) An asset of the individual's estate, if the individual is deceased; (II) An available resource that may not be converted to an excluded resource and must be applied at the Medicaid pay rate toward long term care services if the individual is

	admitted to an institution for long-term care services for more than 6 months. In cases where the individual dies before the resource is fully expended, the remainder shall become an asset of the individual's estate; or (III) An excluded resource, if the individual revokes or terminates the contract and continues to receive services under AHS's Choices for Care program.
(4) Cash/liquid resources	(i) Income is excluded as a resource in the month of receipt, such as an automatic deposit of a social security check into a checking account. (ii) Liquid resources used in the operation of the owner's trade or business as property essential to self-support are excluded.
(5) Exclusion of retirement funds	(i) Any retirement fund owned by a member of the financial responsibility group is excluded when: (A) The member must terminate employment in order to obtain any payment from the fund; (B) The member is not eligible for periodic payments from the fund and does not have the option of withdrawing a lump sum from the fund; or (C) The member is drawing on the retirement fund at a rate consistent with their life expectancy, as specified in § 25.03(b). (ii) If the member is eligible for periodic payments or a lump sum, the member must choose the periodic payments. If the member receives a denial on a claim for periodic retirement benefits, but can withdraw the funds in a lump sum, the lump sum value is counted in the resources determination for the month following that in which the member receives the denial notice. (iii) When a member of the financial responsibility group is seeking MABD for long-term care services and has a spouse, any retirement fund held by the member in an individual retirement account (IRA) or in a work-related pension plan (including Keogh plans) as defined by the Code, does not require a change in the title of ownership in order for the fund to be treated as an excluded resource for the benefit of the spouse.
(6) Tax refunds	Tax refunds on real property, income, and food are excluded as resources.
(7) Student benefits	Any portion of any grant, scholarship, or fellowship used to pay fees, tuition, or other expenses necessary to securing an education is excluded. Portions used to defray costs of food or shelter must be counted.
(8) Savings from excluded income	Savings from excluded income and resources are excluded as resources. This includes, but is not limited to, the following: (i) Liquid resources, including interest earned by the resources accumulated from earnings by a person working with

	disabilities (see § 8.05(d)) on or after January 1, 2000, and kept in a separate bank account from other liquid resources, unless no bank within a reasonable distance from the person's residence or place of work permits the person working with disabilities to establish a separate account without charging fees; and (ii) Nonliquid resources purchased by a person working with disabilities on or after January 1, 2000, with savings from earnings or with a combination of savings from earnings and other excluded income or resources.
(9) Resources excluded by federal law	The following are excluded by federal law from both income and resources: (i) The value of meals and food commodities distributed under the National School Lunch Act and the Child Nutrition Act. (ii) The value of 3SquaresVT or 3SquaresVT cash-out checks. (iii) The value of food or vouchers received through the WIC Program. (iv) The value of food or meals received under the Older Americans Act. (v) Compensation or remuneration received for volunteer work in ACTION programs including foster grandparents, RSVP, SCORE, ACV, ACE, VISTA, Senior Companion Program and UYA. (vi) The value of assistance received under the U. S. Housing Act, U. S. Housing Authorization Act and the Housing and Urban Development Act. (vii) The value of relocation assistance to displaced persons under the Uniform Relocation and Real Property Acquisition Policies Act. (viii) Per capita distributions to certain Indian Tribes and receipts from lands held in trust for certain Indian Tribes. (ix) Payments received under the Alaskan Native Claims Settlement Act. (x) Grants or loans received for educational purposes under any U. S. Department of Education program. (xi) Any assistance received under the Emergency Energy Conservation or Energy Crisis Program. (xii) Any assistance received under the Low-Income Home Energy Assistance Act, either in cash or through vendor payments. (xiii) Compensation paid to Americans of Japanese or Aleut ancestry as restitution for their incarceration during World War II. (xiv) Agent Orange Settlement payments.

	(xv) 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. (xvi) War reparations paid under the Austrian government's pension system. (xvii) Radiation Exposure Compensation Trust Fund payments. (xviii) Assistance received under the Disaster Relief and Emergency Assistance Act or other assistance provided under a Federal statute because of a catastrophe which is declared to be a major disaster by the President of the United States. Comparable assistance received from a State or local government, or from a disaster assistance organization is also excluded. Interest earned on the assistance is also excluded. (xix) Netherlands' Act on Benefits for Victims of Persecution 1940-1945 payments. (xx) Any account, including interest or other earnings on the account, established and maintained in accordance with § 1631(a)(2)(F) of the Act. These accounts are established with retroactive SSI payments made to a child under age 18 and used in ways specified in the Act. The exclusion continues after the child has reached age 18. (xxi) Earnings deposited in a special savings account under the Tangible Assets project managed by the Central Vermont Community Action Council and authorized by PRWORA. (xxii) Payments as the result of a settlement in the case of Susan Walker v. Bayer Corporation, et al. made to hemophiliacs who contracted the HIV virus from contaminated blood products. (xxiii) Any resource of a blind or disabled individual that is necessary for them to carry out their approved Plan for Achieving Self-Support (PASS). The plan must be approved by the SSA.
(10) Exclusions for limited periods	The following resources are excluded for specific periods:
(i) Retroactive Social Security and SSI/AABD	Retroactive payments of SSI, the AABD supplement to SSI, or Social Security benefits for nine months beginning with the month after the month of receipt. These payments are also excluded as resources during the month of receipt.
(ii) Funds for replacing excluded resources	Cash and interest earned on that cash received from any source, including casualty insurance, for the purpose of repairing or replacing an excluded resource that is lost, stolen, or damaged, if used to replace or repair that resource. The exclusion is allowed for nine months from the month of receipt. An extension of an additional nine months can be granted for good cause.
(iii) Earned income tax credit	State and federal earned income tax credit refunds and advance payments for nine months beginning with the month after the month of

	receipt.
(iv) Medical or Social Services payments	Cash received for medical or social services for the calendar month following the month of receipt. In the month following the month of receipt, it is counted as a resource if it has been retained.
(v) Victim's compensation payments	State-administered victims' compensation payments for nine months after the month of receipt.
(vi) Relocation payments	State and local government relocation payments for nine months after the month of receipt.
(vii) Expenses from last illness and burial	Payments, gifts, and inheritances occasioned by the death of another person provided that they are spent on costs resulting from the last illness and burial of the deceased by the end of the calendar month following the month of receipt.
(11) Exclusion of U. S. savings bonds	(i) A U. S. savings bond is excluded as a resource during its minimum retention period if the owner of the savings bond requested a hardship waiver based on financial need due to medical expenses and received a denial from the United States Department of the Treasury, Bureau of Public Debt, Accrual Services Division in Parkersburg, P. O. Box 1328, Parkersburg, West Virginia 26106-1328. (ii) Upon verification of a denial of a hardship waiver, as described above, a U. S. savings bond is considered an available resource of the owner following the expiration of the minimum retention period. Once the minimum retention period expires, the denial of a hardship waiver is not a basis for exclusion of new bond purchases or other excluded assets purchased with the proceeds. (iii) A U. S. savings bond purchased before June 15, 2004, that has its minimum retention period expire after that date, continues to be an excluded resource if it is not redeemed, exchanged, surrendered, reissued, used to purchase or fund other excluded assets, or otherwise becomes available.
(12) Home-based long-term care disregard	An additional resource disregard of $3,000 to the standard $2,000 resource disregard is allowed for an aged or disabled individual without a spouse who resides in and has an ownership interest in their principal place of residence and chooses MABD for long-term care services to be provided in their residence provided all other eligibility criteria are met. This additional resource disregard remains available until the individual begins receiving MABD for long term care services in an institution r in a residential care home that provides enhanced residential care services. Thereafter, if the individual meets the requirements for a home upkeep deduction (see § 24.04(d)), they are eligible to continue this resource disregard for up to 6 months.
29.09 Value of resources counted toward the Medicaid resource limit (10/01/2013, 13-12F)	
(a) In general	Unless an exception under paragraph (d) below applies, the ownership interests of resources of the members of the financial responsibility group

	are valued according to these general rules. (1) Resources not excluded under § 29.08 are valued at their equity value (see (b) below for definition of equity value). (2) The portion of jointly-owned resources not excluded and countable toward the MABD resource limit is determined according to the rules in paragraph (c) below. (3) The equity value of any resource owned entirely by members of the financial responsibility group and not excluded under § 29.08 is counted toward the MABD resource limit.
(b) Definition: Equity value	(1) The fair market value of the resource minus the total amount owed on it in mortgages, liens, or other encumbrances. (2) The original estimate of the equity value of a resource is used unless the owner submits evidence from a disinterested, knowledgeable source that, in AHS's judgment, establishes a reasonable lower value.
(c) Counting jointly-owned resources	
(1) In general	(i) This paragraph defines each type of joint ownership and the amount of the resource that is counted when ownership is shared. (ii) When two or more parties share rights to sell, transfer, or dispose of part or all of personal or real property, the ownership share held by members of the financial responsibility group is counted as prescribed by state law. Shared ownership or control occurs in different forms, including tenancy-in-common, joint tenancy, and tenancy-by-the-entirety. The type of shared ownership involved is determined and used to compute the countable value of the resource. If an individual submits evidence supporting another type of shared ownership, AHS will make a decision about which type applies. If AHS decides not to use the type submitted by the individual, it will provide the individual with a written notice stating the basis for its decision. (iii) Under Vermont law, a co-owner may demand partition, the dividing of lands held by more than one person. For this reason, AHS counts the individual's proportionate share of the lands as an available resource, unless excluded as a home or property up for sale.
(2) Definition: Tenancy-in-common	(i) In tenancy-in-common, two or more parties each have an undivided fractional interest in the whole property. These interests are not necessarily equal. One owner may sell, transfer or otherwise dispose of their share of the property without permission of the other owner(s) but cannot take these actions with respect to the entire property. (ii) When a tenant-in-common dies, the surviving tenant(s) has no automatic survivorship rights to the deceased's ownership interest in the property. Upon a tenant's death, their interest

	passes to their estate or heirs. (iii) Tenancy-in-common applies to all jointly-owned resources when title to the resource does not specify joint tenancy or tenancy-by-the-entireties. (iv) See (c)(5) below for how a resource owned by a member of the financial responsibility group as a tenant-in-common is counted.
(3) Definition: Joint tenancy	(i) In joint tenancy, each of two or more parties has an undivided ownership interest in the whole property. In effect, each joint tenant owns all of the property. When the property is personal property, the interests of the joint tenants are equal. When the property is real property, the interests of the joint tenants can be equal or unequal (unless the instrument creating the joint tenancy contains language indicating a contrary intent, the joint tenants' interests are presumed to be equal[19]). (ii) Upon the death of only one of two joint tenants, the survivor becomes the sole owner. Upon the death of one of three or more joint tenants, the survivors become joint tenants of the entire interest. For real property, the deceased joint tenant's interest is allocated among the surviving joint tenants in proportion to their respective interests at the time of the deceased joint tenant's death unless the instrument creating the joint tenancy contains language indicating a contrary intent. [20] (iii) See (c)(5) below for how a resource owned by a member of the financial responsibility group as a joint tenant is counted.
(4) Definition: Tenancy-by-the-entirety	(i) Tenancy-by-the-entirety can only exist between members of a married couple, including parties to a civil union. (ii) The couple, as a unit, owns the entire property which can be sold only with the consent of both parties. (iii) Upon the death of one tenant-by-the-entirety, the survivor takes the whole. Upon legal dissolution, the former couple become tenants-in-common (see (c)(2) above), and one can sell their share without the consent of the other. (iv) When a member of the financial responsibility group owns a resource as a tenant-by-the-entirety, the entire equity value of the resource is counted as available to the member.
(5) Countability	
(i) General rule for tenancy-in-common and joint tenancy	With the exception noted in (ii) below and subject to the presumption under § 29.09(d)(3) regarding real property joint ownerships created within 60 months prior to the date of the MABD application,, AHS assumes, absent evidence to the contrary, that each owner of shared

[19] 27 VSA § 2(b)

[20] Id.

	property owns only their fractional interest in the property. The total value of the property is divided among all of the owners in direct proportion to the ownership share held by each.
(ii) Exception: Accounts in financial institutions	For an account in a financial institution, AHS assumes that all of the funds in the account belong to the individual. If another member (or members) of the individual's financial responsibility group is on the account, AHS assumes the funds in the account belong to those account owners in equal shares.
(d) Exceptions to general valuation rule	The following paragraphs describe exceptions to the general valuation rules described in paragraph (a) above.
(1) Annuities	Unless an annuity is excluded as a resource under § 29.08(d)(1) or, for purposes of MABD for long term care services, treated as a transfer under § 25.03(h), the fair market value of an annuity is counted. The fair market value is equal to the amount of money used to establish the annuity and any additional payments used to fund the annuity, plus any earnings and minus any early withdrawals and surrender fees. If evidence is furnished from a reliable source showing that the annuity is worth a lesser amount, AHS will consider a lower value. Reliable sources include banks, other financial institutions, insurance companies, and brokers, as well as any other source AHS considers, in its discretion, to be reliable.
(2) Life estates	Unless a life estate interest in property is excluded under § 29.08(a)(6) or the fair market value of the entire property (the life estate and the remainder) is counted as a resource, the fair market value of a life estate interest in property is established by multiplying the fair market value of the property at the time the life estate interest was created by the number in the life expectancy table that corresponds with the individual's age at that time. The life estate table is found in the SSA's POMS at SI 01140.120 (https://secure.ssa.gov/apps10/poms.nsf/lnx/0501140120). If an individual submits evidence supporting another method of establishing the fair market value of a life estate, AHS will make a decision about what method to use. If AHS decides not to use the method submitted, it will provide the individual with a written notice stating the basis for its decision.
(3) Jointly-owned real property	Regardless of a co-owner's refusal to sell jointly-owned real property pursuant to the resource exclusion under § 29.08(a)(5)(i), AHS presumes that a member of the financial responsibility group that owns real property jointly with another person (or persons) owns the entire equity value of the real property if the joint ownership was created less than 60 months prior to the date of the MABD application. This presumption may be rebutted by a showing, through reliable sources, that the other joint owner (or owners) purchased shares of the property at fair market value. Reliable sources include cancelled checks or property transfer tax returns. When it has been established that one or more other co-owners purchased their shares of the property, the proportional interest owned by the member is counted.
(4) U. S. savings bonds	Unless a U. S. savings bond is excluded under § 29.08(i)(11), it is counted as a resource beginning on the date of purchase. To establish the value of the bond, the Savings Bond Calculator or the Comprehensive Savings Bond Value Table on the U. S. Bureau of Public Debt's internet website at www.publicdebt.treas.gov/sav/savcalc.htm is used.

	Alternately, AHS obtains the value by telephone from a local bank. The following general rules apply to valuation: (i) Series E and EE bonds are valued at their purchase price. (ii) Series I bonds are valued at their face value. (iii) Service HH bonds are valued at their face value.
(5) Income-producing promissory notes and contracts	(i) Unless the promissory note or other income-producing resource (contract) is excluded under § 29.08(d)(2) or, for purposes of MABD for long-term care services, treated as a transfer under § 25.03(i), the fair market value of a promissory note or contract is counted. Regardless of negotiability, fair market value equals the amount of money used to establish the note or contract and any additional payments used to fund it, plus any earnings and minus any payments already received. If evidence is furnished to AHS of a good faith effort to sell the note or contract by obtaining three independent appraisals by reliable sources which reflect that the value of the note or contract is less than fair market value, AHS will consider the note or contract available to its owner only in the amount of this discounted value. Reliable sources include banks, other financial institutions, insurance companies, and brokers, as well as any other source AHS considers, in its discretion, to be reliable. (ii) For an individual requesting MABD for long-term care services, a note or contract valued at a discount either will be treated as an available resource at the discounted amount or subject to a transfer penalty to the extent of the amount discounted from the fair market value, in the discretion of AHS. Where the note or contract is determined to have no value on the open market, a transfer penalty will be applied for the full value used to establish the note or contract and any additional payments used to fund it, plus any earnings and minus any payments already received.
(6) Substantial home equity	
(i) Definition: Home equity	The value of a home based on the town's assessment adjusted by the common level of appraisal (CLA), minus the total amount owed on it in mortgages, liens, or other encumbrances. When an individual requesting MABD owns their home in a joint ownership with someone other than their spouse, absent evidence to the contrary, the individual's equity interest in the home is reduced by the amount of the other joint owner's equity interest when the other joint owner resides in the home.
(ii) Counting rule	(A) A home is considered a resource, for purposes of eligibility for MABD for long term care services, when the owner's equity in the home is substantial. See Vermont's Medicaid Procedures Manual for the current substantial home equity limit. The substantial home equity limit increases from calendar year to year based on the percentage increase in the consumer price index for all urban consumers (all items; United States city average) rounded to the nearest $1,000. (B) Substantial home equity precludes payment for MABD for

	long-term care services unless one of the following individuals lawfully resides in the home: (I) The owner's spouse; (II) The owner's child who is under age 21; or (III) The owner's child who is blind or permanently and totally disabled, regardless of age. (C) A individual with excess equity in their home who is found ineligible for MABD for long-term care services may receive other Medicaid services besides long-term care services if they meet the eligibility criteria for a coverage group that covers services other than long-term care services.
(iii) Hardship waivers	An individual who is ineligible for MABD for long-term care services due to excess equity in their home may request an undue hardship waiver based on the criteria specified at § 25.05.
(iv) Reverse mortgages and home equity loans	An individual is permitted to use a reverse mortgage or home equity loan to reduce their equity interest in their home. In such circumstances, the funds are valued as follows: (A) The existence of a line of credit is not considered to diminish the equity value except in amounts from the line of credit actually paid to the borrower. (B) During the month of receipt, lump-sum payments are an excluded resource (§ 29.08(a)(4)) and proceeds paid in a stream of income are excludable income (§ 29.13(b)(30)). Lump sum payments from home equity loans retained for more than a month continue to be an excluded resource. Lump sum payments and streams of income are subject to transfer penalties if given away in the month of receipt or thereafter.
29.10 Determination of countable resources (10/01/2013, 13-12F)	
(a) In general	Countable resources are determined by combining the resources of the members of the financial responsibility group, as described in § 29.03, and comparing them to the resource standard of the Medicaid group, as described in § 29.04. Countable resources are determined for different types of Medicaid groups: adults without spouses, adults with spouses, children, and individuals requesting MABD for long-term care services. If the resources of the Medicaid group fall below or are equal to the applicable resource standard, the resource test is passed. If an excess resource amount remains after all exclusions have been applied (see § 29.08), the individual has not passed the resource test. An individual may become eligible for MABD by spending down or giving away excess resources as provided in § 30.00 subject to transfer of resource rules (see § 25.00) for those seeking MABD for long-term care services.
(b) Determining countable resources for individuals other than children	The general rule in paragraph (a) above is followed to determine whether total resources, after exclusions, of an individual other than a child falls below the resource maximum for one.

(c) Determining countable resources for individuals with spouses and not in long-term care	The general rule in paragraph (a) above is followed to determine whether the total resources, after exclusions, of an individual living with their spouse and requesting MABD, other than MABD for long-term care services, falls below the resource maximum for two.
(d) Determining countable resources for children	(1) Unless otherwise specified in the coverage group rules at §§ 8.05 and 8.06, the countable resources of an eligible child are determined by: (i) Combining the resources of the parents living with the child with the child's resources, until the child reaches the age of 18; (ii) Subtracting the resource maximum for one, if one parent, or two, if two parents, from the parent's countable resources; and (iii) Deeming and adding the remainder to the child's own countable resources. (2) If the child's total countable resources fall below the resource maximum for one, the resource test is passed.
(e) Determining countable resources for individuals requesting long term care who have spouses	For an individual requesting MABD for long-term care services who has a spouse, the resource evaluation process of assessment and allocation is performed as set forth in this paragraph at the beginning of the first continuous period of long-term care. An individual discharged from long-term care and readmitted later does not undergo these steps again; only the resources of, and any new transfers by, the readmitted individual are counted. An institutionalized spouse (sometimes referred to in this rule as the "IS") who receives additional resources after allocating less than the community spouse resource allocation (CSRA) maximum to their community spouse (sometimes referred to in this rule as the "CS") and being found eligible for MABD for long-term care services, may, until the first annual review of their eligibility, continue to transfer resources to the CS up to a combined total transfer of no more than the CSRA maximum. After the IS's first regularly-scheduled annual redetermination of eligibility, no further transfers are allowed even if the CSRA maximum has not been allocated to the CS; the rules regarding transfers apply after the IS's first regularly-scheduled annual redetermination (see § 25.00)
(1) Assessment of resources for individuals with community spouses	At the time of admission to long-term care and application for MABD for long-term care services, including long-term care services in the individual's home or community-based setting, AHS completes an assessment of resources. An individual or their spouse may also request a resource assessment prior to admission to long-term care. AHS provides a copy of the assessment to each spouse and retains a copy. The assessment must include at least: (i) The total value of countable resources in which either spouse has an ownership interest; (ii) The basis for determining total value; (iii) The spousal share or one-half the total; (iv) Conclusion as to whether the IS would be eligible for MABD based on resources; (v) The highest amount of resources the IS and CS may retain

	and still permit the IS to be eligible; (vi) Information regarding the transfer of assets policy; and (vii) The right of the IS or the CS to a fair hearing at the time of application for MABD.
(2) Allocation of resources for individuals with community spouses	(i) An allocation of resources is completed at the time of the IS's application for MABD for long-term care services, as follows: (A) The total countable resources of the couple are determined at the time of the application for MABD for long-term care services, regardless of which spouse has an ownership interest in the resource; (B) The greatest of the following is deducted: (I) CSRA maximum; (II) Amount set by a fair hearing, or (III) Amount transferred from the IS to the CS under a court order. (ii) The remaining resources allocated to the IS are compared to the resource maximum for one to determine whether or not the IS passes the MABD resource test. If the IS does not pass the resource test, see the spenddown provisions at § 30.00. (iii) The resources of the CS are considered available to the IS until the month after the month in which the IS becomes eligible for MABD for long-term care services. If the CS fails to make the resources accessible to the IS, after AHS has determined that they are available, AHS may still grant the IS MABD for long-term care services if: (A) The IS assigns any rights to support from the CS to AHS; or (B) Denial of MABD for long-term care services would work an undue hardship, as specified in § 25.05. (iv) The CS is provided with the amount determined to be the share of the CS (or to someone else for the sole benefit of the CS). Any transfer of resources from the IS to the CS must be completed by the next review of eligibility of the IS. The transfer will be verified at the next regularly scheduled redetermination of the IS's eligibility. (v) For purposes of allocation, an "assisted living" facility is considered a community setting and not an institution for long term care services provided that the assisted living facility does not include 24-hour care, has privacy, a lockable door, and is a homelike setting. An IS is permitted to allocate income and resources to a CS when the CS resides in an assisted living facility.

29.11 Overview of income requirements (10/01/2013, 13-12F)

(a) Definition: Income	Any form of cash payment from any source received by an individual or by a member of the individual's financial responsibility group. Income is considered available and counted in the month it is received or credited to the individual with the exception of a lump sum receipt of earnings such as sale of crops or livestock. These receipts are only counted if received during the six-month accounting period and are averaged over the six-month period.
(b) Counting rules	(1) All earned and unearned income of an individual who is aged, blind or disabled and of the members of the individual's financial responsibility group is counted except income that is specifically excluded (see § 29.13) or deducted (see § 29.15). All countable income is verified. (2) Countable income depends on the coverage group for which an individual is eligible. It is determined according to the rules at subsection 29.14 and compared to the highest applicable income standard. If total countable income for the Medicaid group exceeds the income standard for every coverage group in §§ 8.05 and 8.06, the individual is denied eligibility and given a spenddown (see § 30.00).

29.12 Types of income (10/01/2013, 13-12F)

(a) In general	This subsection describes the kinds of income considered when determining MABD eligibility.
(b) Earned income	Earned income includes the following: (1) Gross salary, wages, commissions, bonuses, severance pay received as a result of employment. (2) Income from self-employment (see (c) below for more information about self-employment income). (3) Payments from Economic Opportunity Act of 1964 programs as recipients or employees, such as: (i) Youth Employment Demonstration Act Programs; (ii) Job Corps Program (Title I, Part A); (iii) Work Training Programs (Title I, Part B); (iv) Work Study Programs (Title I, Part C); (v) Community Action Programs (Title II); and (vi) Voluntary Assistance Program for Needy Children (Title II); and (4) Income from: (i) Employment under Title I of the Elementary and Secondary Education Act (e.g., as a teacher's aide, lunch room worker, etc.);

	(ii) Wages from participation in the Limited Work Experience Program under the Workforce Investment Act of 1998 (29 U. S. C. §794d); and (iii) Earnings from the Senior Community Service Employment (SCSE) program.
(c) Self-employment income	(1) Net earnings from self-employment are counted. Net earnings means gross income from any trade or business less the allowable deductions specified in § 29.15(a)(1). (2) Tax forms are used to determine countable income from self-employment. An individual who states that the income on their tax forms is no longer reflective of their situation may submit alternate documentation. (3) When the individual's business has been the same for several years, income reported on tax forms from the last year is used. (4) When the individual's business was new in the previous or current year and the individual has business records, income reported on tax forms and other available business records is divided by the number of months the individual has had the business. (5) When the individual's business has no records, is seasonal or has unusual income peaks, income reported on the individual's signed statement estimating annual income is included.
(d) Unearned income	(1) Any payment other than earned income from any source received by an individual or by a member of the individual's financial responsibility group. It is the gross payment, less allowable deductions at § 29.15(b). Periodic benefits received by an individual as unearned income are counted. (2) Unearned income includes income from capital investments in which the individual is not actively engaged in managerial effort. This includes rent received for the use of real or personal property. Ordinary and necessary expenses of rental property such as interest on debts, state and local taxes, the expenses of managing or maintaining the property, etc. are deducted in determining the countable unearned income from this source. The deduction is permitted as of the date the expense is paid. Depreciation or depletion of property is not a deductible expense. (3) Unearned income also includes, but is not limited to, the following: (i) Social Security retirement, disability, SSI, or survivor benefits for surviving spouses, children of a decedent, and dependent parents; (ii) Railroad Retirement; (iii) Unemployment compensation;

	(iv) Private pension plans; (v) Annuities; (vi) Interest earned on life insurance dividends; (vii) Regular and predictable voluntary cash contributions received from friends or relatives; (viii) Cash prizes or awards; (ix) Withheld overpayments of unearned income, unless the overpayment was counted as income in determining Medicaid eligibility in the month received; (x) Royalty payments to holders of patents or copyrights for which no past or present work was or is involved; (xi) Retroactive Retirement, Survivors and Disability Insurance (RSDI) benefits for an individual with drug addiction or alcoholism (such benefits are treated as if they had all been received in a lump sum payment, even if paid in installments); (xii) Veteran's Administration (VA) pension, compensation and educational payments that are not part of a VA program of vocational rehabilitation and do not include any funds which the veteran contributed; (xiii) Interest payments received by the individual on an income-producing promissory note or contract (such as a property agreement or loan agreement) when the individual is the lender and the note or contract is excluded as a resource under § 29.08(d)(2). (xiv) Alimony and support payments received; and (xv) Death benefits received by an individual to the extent the benefits exceed what was paid by the individual for the expenses of the deceased person's last illness and burial.
29.13 Income Exclusions (10/01/2013, 13-12F)	
(a) Earned income exclusions	The following are excluded from earned income: (1) Support service payments made directly to the providers of services in the Limited Work Experience Program under the Workforce Investment Act of 1998 (29 USC § 794d) or needs-based payments of $10 per day made to participants in the program. (2) The earned income of an individual under the age of 22 who is a student regularly attending school. This applies to wages received from regular employment, self-employment, or payments from the Neighborhood Youth Corps, Work Study and similar programs. (3) Infrequent or irregular earned income received, not to exceed

	$30 per calendar quarter. (4) Any in-kind assistance received from others. (5) Earned Income Tax Credit payments (both refunds and advance payments). (6) Earned income of a working disabled individual when performing the second step of the categorically-needy eligibility test redetermining net income, set forth in § 8.05(d). (7) Earned income of a child under the age of 18. (8) Wages paid by the Census Bureau for temporary employment.
(b) Unearned income exclusions	Unearned income exclusions are limited to the following: (1) Expenses incurred as a condition of receiving the unearned income. For example, guardianship fees may be deducted from unearned income if having a guardian is a requirement for receiving the income, or attorney fees and court costs may be deducted from unearned income if they were incurred in order to establish a right to the income. (2) The following VA payments: (i) Portion of pension or compensation payment for aid and attendance and housebound allowances, even when the provider is a spouse or a parent of the veteran; (ii) Augmented portion of pensions, compensation or other benefits for a dependent of a veteran or a veteran's spouse; (iii) $20 from educational benefits to the veteran funded by the government; (iv) Educational benefits paid as either part of a plan of vocational rehabilitation or by withdrawals from the veteran's own educational fund; (v) Clothing allowance; and (vi) Payment adjustments for unusual medical expenses. (3) Ordinary and necessary expenses of rental property and other capital investments except depreciation or depletion of property. This includes, but is not limited to, interest on debts, state and local taxes. The expenses of managing or maintaining the property, as of the date the expense is paid, are deductible. (4) The first $20 per month of any unearned income unless all of the unearned income is from a source that gives assistance based on financial need. (5) Any public agency's refund of taxes on food or real property. (6) Infrequent or irregular unearned income received, not to exceed

$60 per calendar quarter.

(7) Bills paid directly to vendors by a third party.

(8) Replacement of lost, stolen or destroyed income.

(9) Weatherization assistance.

(10) Receipts from the sale, exchange or replacement of a resource.

(11) Any assistance based on need which is funded wholly by the state, such as General Assistance.

(12) Public assistance benefits of any person who is living with the individual, as well as any income that was used to determine the amount of those benefits.

(13) Any portion of a grant, scholarship or fellowship used to pay tuition, fees or other necessary educational expenses.

(14) Home produce used for personal consumption.

(15) Assistance and interest earned on assistance for a catastrophe from the Disaster Relief and Emergency Assistance Act or other comparable assistance provided by the federal, state or local government.

(16) Irregular and unpredictable voluntary cash contributions or gifts received from friends or relatives.

(17) Payments for providing foster care for children or adults placed in the individual's home by a public or private non-profit placement agency.

(18) One-third of child support payments received for a child in the household of the individual. NOTE: The remaining two-thirds of the support payments are considered the unearned income of the child received from the absent parent.

(19) Income paid for chore, attendant or homemaker services under a government program, such as Title XX personal services payments or the $90 VA Aid and Attendance payments to veterans in nursing homes.

(20) Any "in-kind" assistance received from others.

(21) Assistance provided in cash or in kind (including food, clothing, or shelter) under a government program that provides medical care or services (including vocational rehabilitation).

(22) That portion of a benefit intended to cover the financial need of other individuals, such as AABD-EP grants.

(23) Retroactive payments of SSI, AABD or OASDI benefits if the payments were included in determining financial eligibility for Medicaid in the month it was actually owed to the individual.

	(24) Home energy assistance provided by a private nonprofit organization or a regulated supplier of home energy. (25) State-administered victims' compensation payments. (26) State or local government relocation payments. (27) Payments occasioned by the death of another person to the extent that they are used to pay for the deceased person's last illness and burial, including gifts and inheritances. (28) Earned Income Tax Credit payments (both refunds and advance payments). (29) Social security disability insurance benefits (SSDI) and veterans disability benefits provided to working disabled persons when determining categorically-needy eligibility, specified in § 8.05(d). (30) Income from a home equity conversion plan in the month received. (31) Dividends paid on life insurance policies. (32) Payments made by someone other than the individual to a third-party trust for the benefit of the individual. (33) Interest and dividend income from a countable resource or from a resource excluded under a federal statute other than Section 1613 of the Act. (34) Any interest on an excluded burial space purchase agreement if left to accumulate as part of the value of the agreement. (35) Any amount refunded on income taxes that the individual has already paid. (36) Proceeds of a loan in the month received when the individual is the borrower because of the borrower's obligation to repay. (37) Exclusions based on federal law as set forth in § 29.08(i)(9).
29.14 Determination of countable income (10/01/2013, 13-12F)	
(a) In general	(1) The earned and unearned income of the members of the financial responsibility group is counted. Income is considered available and counted in the month it is received or credited to the member. (2) The general approach AHS follows when it determines countable income for MABD is set forth below. These general rules apply to all individuals. (i) Determine income of the financial responsibility group. (ii) The income of all members of the financial responsibility group is combined, and the appropriate exclusions (see § 29.13) and

	standard deductions applied (see § 29.14). (iii) Compare countable income to the applicable income standard. (iv) An individual passes the income test when their Medicaid group's income does not exceed the appropriate PIL, or the applicable income maximum, whichever is higher. An individual with income greater than the applicable income standard may establish financial eligibility by incurring eligible medical expenses that at least equal the difference between their countable income and the applicable PIL. (3) The following subsections specify how income is allocated and deemed based on the type of coverage sought and the size of the financial responsibility group.
(b) Financial responsibility group of one individual seeking MABD other than MABD for long-term care	Common financial responsibility groups of one include a single adult, an individual residing in a residential care home, and a child seeking Katie Beckett coverage. AHS determines countable income for an individual seeking MABD, other than MABD for long-term care services, with a financial responsibility group of one as follows: (1) Determine and combine the total countable unearned income of the individual. (2) Subtract a $20 disregard unless all the unearned income is from a source that gives assistance based on financial need. (3) Deduct an allocation for each ineligible child in the household for whom the individual is financially responsible. The amount of each allocation is equal to the maximum allocation amount minus any countable income of the child. If the unearned income is not at least equal to the applicable allocation amount, any remaining allocation may be deducted from earned income. (4) Deduct from unearned income amounts used to comply with the terms of court-ordered support or Title IV-D support payments. If unearned income is insufficient, any remaining amounts may be deducted from earned income. (5) Determine and combine the individual's countable earned income. (6) Deduct any remaining amount of the $20 disregard, allocations for children and child support payments from the earned income. (7) Deduct $65 from the remaining earned income. (8) Deduct allowable work expenses for the disabled (§ 29.15(a)(3)). (9) Deduct one-half of the remaining earned income. (10) Deduct any allowable work expenses for the blind (§ 29.15(a)(2)). (11) Combine the remaining earned income with any remaining

	unearned income. (12) Deduct the amount of any income of a blind or disabled individual that is necessary for them to carry out a Plan to Achieve Self-Support (PASS), if applicable. (13) The result is the individual's countable income for the month. Compare it to the PIL or the SSI/AABD payment standard for one, whichever is higher.
(c) Financial responsibility group of two seeking MABD other than MABD for long-term care services	Countable income for MABD for any individual with a financial responsibility group of two is determined according to the rules under paragraph (b) above, as well as the following additional rules: (1) *Deem income at step (1).* Earned and unearned income is deemed to the individual at step (1) from their ineligible spouse or ineligible parent, except no income is deemed to an individual from their ineligible children. (2) *Allocate income at step (3).* Income is allocated from the financial responsibility group to each member of the financial responsibility group who is not applying for MABD at step (3) in the following amounts: (i) For a child, the difference between the SSI federal payment rate for one and the SSI federal payment rate for a couple is allocated. The allocation is reduced for ineligible children if they have income, unless the ineligible children are students with earned income. No allocation is made to children receiving public assistance. (ii) For a parent in a one-parent financial responsibility group, the SSI federal payment for one is allocated. (iii) For parents in two-parent financial responsibility groups, the SSI federal payment for two is allocated. (3) *Count income at step (13) for an individual requesting MABD who has a spouse.* Countable income for an individual whose spouse is not requesting MABD is determined, according to the rules under paragraph (b) above, except at step (13) the countable income of the Medicaid group is compared to the PIL or the SSI/AABD payment standard for two, whichever is higher.
(d) Parent and child living together seeking MABD, other than MABD for long-term care services	These groups include a parent who is aged, blind, or disabled and a child who is blind or disabled. When a parent and an eligible child in the same household both request MABD, countable income is determined as a financial responsibility group of two as follows: (1) Determine the net income available to the parent following the steps under paragraph (b) if the parent is single, or under paragraph (c) if the parent has a spouse, except do not allocate any income to the eligible child. Compare the parent's income to the PIL for one or, if married, the SSI/AABD payment standard for two. If the parent's countable income is below the highest applicable income standard, the parent has passed the income test for eligibility. If the parent's income exceeds the highest applicable income standard, deem the amount of income in

	excess of the highest applicable income standard to the eligible child as unearned income. (2) Determine the child's countable income by deeming any income from (1) above and then following the steps in paragraphs (e)(3)(iv) through (xiv). If the child's income is less than the PIL, both the parent and the child pass the income test for MABD eligibility. (3) When both a parent and child have a spenddown requirement, the parent and child will pass the income test once the child's spenddown requirement has been met because the parent's excess income was deemed to the child. If the parent's spenddown requirement is less than the child's and the parent meets their spenddown requirement, the parent will become eligible. The child, however, will remain ineligible until the remainder of the child's spenddown is met. The parent's incurred eligible medical expenses are deducted from the spenddown requirements of both the parent and child because the parent's income was included in both income computations.
(e) Children seeking MABD, other than MABD for long-term care services (excluding Katie Beckett)	(1) The provisions of this paragraph generally apply when countable income for an eligible child is determined as a financial responsibility group of one. They do not apply in the following contexts: (i) Katie Beckett (see paragraph (b) above); (ii) A child whose parent also requests Medicaid (see paragraph (d) above); or (iii) Long-term care services (see paragraph (f) below). (2) Since parents are financially responsible for their children, their income must be considered available to their eligible child requesting MABD, until the child reaches the age of 18. (3) AHS determines countable income in applicable cases as follows: (i) Determine the total countable income, both earned and unearned, of the parents living with the child. (ii) Deduct an allocation specified in paragraph (c)(2)(ii)(B) of (C) for the needs of the parents living in the household from the total countable income of the parents. (iii) Deem the remaining amount to the child. If there is more than one blind or disabled child in the household, divide the remainder by the number of blind or disabled children and deem an equal portion to each. Do not deem more income to a child than the amount which, when combined with the child's own income, would bring their countable income to the PIL. If the share of parental income that would be deemed to a child makes that child ineligible because that child has other countable income, deem parental income to other blind and disabled children under age 18 in the household and no

	portion to the child. (iv) Add the child's own unearned income. This is the total unearned income. (v) Deduct the $20 disregard. This is the total countable unearned income. (vi) Determine the earned income of the child. (vii) Deduct the balance of the $20 disregard. (viii) Deduct the $65 earned income exclusion from any earned income. (ix) Deduct any allowable work expenses of a disabled child (§ 29.15(a)(3). (x) Deduct one-half of the remaining earned income. (xi) Deduct any allowable work expenses of a blind child (§ 29.15(a)(2). (xii) Combine the remaining earned and unearned income. (xiii) Deduct the amount of any income that is necessary to carry out a Plan to Achieve Self-Support (PASS), if applicable. (xiv) The result is the child's countable income. Compare it to the PIL for one. A child with income below the PIL passes the income test.
(f) Individuals seeking MABD for long-term care services	Countable income for an individual requesting MABD for long-term care services is determined as follows: (1) The countable income of the individual is compared to the applicable income standard for their coverage group beginning with the date of admission to long-term care. (2) The institutional income standard (IIS) for an individual equals 300 percent of the maximum SSI federal payment to an individual living independently in the community. The IIS for a couple equals twice the IIS for an individual. (3) When an individual is in a nursing facility and AHS has an indication that they will need long-term care for fewer than 30 days, AHS uses the PIL for the month of admission, and applies the rules for MABD other than MABD for long-term care services.
(g) Long-term care individuals in an institution	(1) Countable income for an individual seeking MABD for long-term care services in an institution is determined according to the rules under paragraph (b) above, except AHS: (i) Allocates income to the individual's community spouse, dependent children and for home upkeep, according to the rules in § 24.04;

	(ii) Allocates a personal needs allowance to the individual; and (iii) Compares the countable income of the Medicaid group to the IIS beginning with the date of admission to long-term care. (2) For an individual whose gross income exceeds the IIS, AHS determines whether they may spend down their excess income to the PIL to establish their financial eligibility as medically needy, according to the rules at § 30.00. AHS determines whether the individual has incurred eligible medical expenses that equal the difference between their countable income and the PIL.
(h) Long-term care individuals seeking services in their home or community-based setting	(1) Countable income for an individual for MABD for long-term care services in their home or in a community-based settingis determined according to the rules under paragraph (b) above, except AHS: (i) Allocates income to the individual's community spouse and dependent children according to the rules in § 24.04; and (ii) Allocates a community maintenance allowance to the individual; and (iii) Approves income eligibility if the individual: (A) Has gross income that does not exceed the IIS; or (B) Passes the net income test for an individual working with disabilities (see § 8.05(d)). (2) For an individual whose gross income exceeds the IIS, AHS determines whether they may spend down their excess income to the PIL to establish their income eligibility as medically needy using the rules at § 30.00. AHS determines whether the individual has incurred eligible medical expenses that equal the difference between their countable income and the PIL.

29.15 Income deductions (10/01/2013, 13-12F)

	Deductions from earned income, including self employment, and from unearned income are allowed.
(a) Earned income deductions	A deduction of $65.00 and one-half of the remainder applies to all determinations of earned income.
(1) Business expenses	Deductions of business expenses from self-employment income are limited to the following: (i) 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; cost of materials, livestock and equipment required for the production of income; and any business depreciation. (ii) The cost of any meals provided to children for whom an individual provides day care in their own home, at the currently

	allowed rate per meal. (iii) The actual operating expenses necessary to produce cash receipts for commercial boarding houses: an establishment licensed as a commercial enterprise that offers meals and lodging for compensation, or, in areas without licensing requirements, a commercial establishment that offers meals and lodging with the intention of making a profit. (iv) Room and board, alone or as part of custodial care, provided that the amount shall not exceed the payment the household receives for room and board. (v) Foster care payments made by AHS to licensed foster homes, including room and board of children in the custody of and placed by AHS when the Medicaid group includes a foster parent. (vi) Ordinary and necessary expenses for active management of capital investments, like rental property. These may include fire insurance, water and sewer charges, property taxes, minor repairs which do not increase the value of the property, lawn care, snow removal, advertising for tenants and the interest portion of a mortgage payment.
(2) Work expenses of blind individuals	In addition to other allowable deductions, work expenses from income of a blind individual include the following: (i) Cost of purchasing and caring for a guide dog; (ii) Work-related fees such as licenses, professional association dues or union fees; (iii) Transportation to and from work including vehicle modifications; (iv) Training to use an impairment-related item such as Braille or a work-related item such as a computer; (v) Federal, state and local income taxes; (vi) Social Security taxes and mandatory pension contributions; (vii) Meals consumed during work hours; (viii) Attendant care services; (ix) Structural modifications to the home; and (x) Medical devices such as wheelchairs. (xi) NOTE: Rates for mileage reimbursement are the rates established by the U.S. General Services Administration. The rates fluctuate periodically. For the current rate, refer to the U.S. General Services Administration's website at www.gsa.gov/mileage
(3) Work expenses of disabled	In addition to other allowable deductions, work expenses from income of a disabled individual include the following:

individuals	(i) Transportation to and from work, including vehicle modifications; (ii) Impairment-related training; (iii) Attendant care; (iv) Structural modifications to the home; and (v) Medical devices such as wheelchairs. (vi) NOTE: Rates for mileage reimbursement are the rates established by the U.S. General Services Administration. The rates fluctuate periodically. For the current rate, refer to the U.S. General Services Administration's website at www.gsa.gov/mileage
(b) Unearned income deductions	The following are deducted from unearned income: (1) $20, unless the source of the income gives all assistance based on financial need; and (2) Amounts used to comply with the terms of court-ordered support or Title IV-D support payments.

30.00 Spenddowns (10/01/2013, 13-12F)

(a) In general	(1) When the total countable income or resources of a Medicaid group exceeds the applicable income or resource standard for eligibility after allocations are made, and exclusions and disregards are applied, an individual requesting MABD, including MABD for long-term care services, may use the spenddown provisions set forth in this section to attain financial eligibility. As stated in § 28.04(c), the income spenddown provisions under this section also apply to an individual requesting MCA whose income exceeds the applicable income standard for eligibility and who is seeking MCA eligibility as medically needy and is subject to an income spenddown in order to be eligible. (2) Spending down is the process by which a Medicaid group incurs allowable expenses to be deducted from its income or spends resources to meet financial eligibility requirements. (3) Spenddown is calculated using an accounting period of either one or six months, depending on the type of MABD services requested (see § 30.02)

30.01 Definitions (10/01/2013, 13-12F)

(a) Accounting period	The one-month or six-month span of time used to budget the income of an individual requesting MABD
(b) Community living arrangement	(1) A community living arrangement includes any residence, such as a house, apartment, residential care home, assisted living facility, boarding house, or rooming house. In a community

	living arrangement, the individual requesting MABD obtains and pays for basic maintenance items, such as food, shelter, clothing, personal needs, separately from medical care. The individual requesting MABD may live alone, as a member of a family, or with non-relatives. (2) An individual requesting MABD for long-term care services is not considered to be in a community living arrangement.
(c) Hospice services	An individual receiving hospice services is considered to be in a long-term care living arrangement. An individual receiving hospice services is: (1) Terminally ill; (2) Would be eligible for MABD for long-term care if they lived in an institution; and (3) Needs additional interdisciplinary medical care and support services to enable them and their families to maintain personal involvement and quality of life in their choice of care setting and site of death.
(d) Long-term care living arrangement	An individual requesting MABD for long-term care services, including long-term care services in their home or in a community-based setting, is considered to be in a long-term care living arrangement. MABD eligibility is determined according to long-term care Medicaid eligibility rules. Institutional living includes nursing facilities, rehabilitation centers, and intermediate care facilities for people with developmental disabilities (ICF-DD).
(e) Income spenddown	The amount of qualifying medical expenses a Medicaid group must incur to reduce its excess income to the maximum applicable to their MABD coverage category.
(f) Resource spenddown	The amount a Medicaid group must spend to reduce its excess resources to the resource standard applicable to the appropriate MABD coverage category.
(g) Waiver services	An individual receiving waiver services, as defined in § 3.00, is considered to be in a long-term care living arrangement. An individual receiving waiver services: (1) Would be eligible for MABD for long-term care services if they lived in an institution; and (2) Needs enhanced residential care, home-and-community-based care, traumatic brain injury services, developmental disability services, or children's mental health services in order to live in the community.
30.02 Accounting periods (10/01/2013, 13-12F)	
(a) Accounting periods are based on living arrangements	The length of the accounting period used to compute spenddown requirements depends on the living arrangement of the individual requesting MABD. For the purposes of MABD eligibility, an individual may be in a community living arrangement or a long-term care living

	arrangement.
(b) Six-month accounting period for community living arrangement	(1) A six-month accounting period is used to determine spenddown requirements for an individual in a community living arrangement. (2) The six-month period begins with the first month for which MABD is requested, usually the month of application. If MABD is requested for expenses incurred during any one or more of the three months preceding the month of application, the six-month period begins with the earliest of these three months in which expenses were incurred and the individual met all other eligibility requirements. (3) To determine the amount of income an individual must spend down, AHS makes reasonable estimates of future income, subject to review and adjustment if the individual's circumstances change during the remainder of the six-month accounting period.
(c) One-month accounting period for long-term care living arrangement	(1) A one-month accounting period is used to determine spenddown requirements for an individual in a long-term care living arrangement. (2) The one-month accounting period begins with the first calendar month during which the individual is in a long-term care living arrangement for any part of the month, applies for MABD for long-term care services for that month, and meets the general and categorical requirements for MABD for long-term care services eligibility. (3) The one-month accounting period ends with the last calendar month during which the individual is in long-term care living arrangement for any part of the month and passes all other MABD for long-term care services eligibility tests.
30.03 Spend down of excess resources and income – in general (10/01/2013, 13-12F)	
	An individual who passes all nonfinancial eligibility tests may qualify for MABD by spending down the income or resources that are in excess of the maximums applicable to them. The income and resource maximums for each eligibility category are specified in the descriptions found in §§ 8.05 and 8.06, and in Vermont's Medicaid Procedures Manual.
30.04 Resource spenddowns (10/01/2013, 13-12F)	
(a) Spending down excess resources	(1) An individual requesting MABD with excess resources is determined to have passed the resource test upon proof that the excess resources are no longer held as a resource and have actually been spent or given away. However, an individual with excess resources seeking MABD for long-term care services is subject to the transfer-of-resource provisions at § 25.00 if they spend or give away excess resources within the

	penalty period specified in § 25.04. (2) MABD may be granted for the month of application if the resource test is passed at any point in the month and all other eligibility criteria are met. Resources may rise above the resource maximum, for example, due to interest added to bank accounts or failure to use the full monthly income amount protected for maintenance expenses during the month it is received. An individual enrolled in MABD may maintain MABD eligibility for any month in which resources exceed the resource maximum by taking any action that reduces the excess amount, including giving the excess to AHS to repay expenditures on the individual's care. As long as resources are reduced to the resource maximum before the end of the month during which resources exceed the limit, MABD continues without interruption. (3) When a third party who handles any resources of an individual receiving MABD or of a member of the individual's financial responsibility group is unaware of a resource or its value, AHS provides uninterrupted MABD to the individual as long as the excess amount is paid to AHS as a recovery of Medicaid payments. Excess resources reimbursed to AHS in these situations will not result in ineligibility.
(b) Retroactive coverage	One or more of the following actions may be taken to reduce excess resources in order to qualify for MABD up to three months prior to the month of application as long as all other eligibility tests are passed: (1) Set up a burial fund that meets the requirements specified in § 29.08 for an excluded resource. (2) If countable income is less than the applicable PIL, spend resources on maintenance expenses, such as housing, food, clothing and fuel, up to a maximum per month of the difference between the countable income and the applicable PIL. (3) Spend excess resources on covered or noncovered medical expenses.
30.05 Income spenddowns (10/01/2013, 13-12F)	
(a) Spending down excess income on medical expenses	AHS determines that an individual requesting MABD with excess income has passed the income test upon proof that medical expenses have been paid or incurred at least equal to the difference between the countable income and the applicable income maximum for the accounting period.
(b) Allowable uses of excess income	Medical expenses of any member of the individual's financial responsibility group, whether they are paid or incurred but not paid, may be used to meet the individual's income spenddown requirement.
(c) Income spenddown methodology	(1) An individual requesting MABD, other than MABD for long-term care services, with income greater than the PIL may spend their excess income down to the PIL on medical expenses following the methodology specified below to receive MABD as part of the

	medically-needy coverage group. (2) An individual seeking MABD for long-term care services with income greater than the IIS may spend their excess income down to the PIL on medical expenses following the methodology specified below to receive MABD for long-term care services as part of the medically needy coverage group. (3) The spenddown methodology is the same for all living arrangements, except that a one-month accounting period applies to an individual in a long-term care living arrangement and a six-month accounting period applies to an individual in a community living arrangement.
(d) Eligibility date	(1) A Medicaid group with excess income passes their income test on the first day within their accounting period that deductible medical expenses meet or exceed their spenddown requirement. Sometimes this allows for retroactive coverage. (2) Eligibility becomes effective: (i) On the first day of the month when a spenddown requirement is met using health insurance expenses and noncovered medical expenses. (ii) Later than the first day of the month when a spenddown requirement is met using covered medical expenses. (3) Special eligibility dates apply, as set forth in § 30.06 for a Medicaid group that meets their spenddown requirement using noncovered assistive community care services (ACCS). (4) MABD pays for covered services on the first day that the Medicaid group's medical expenses exceed the amount of the group's spenddown requirement. MABD continues until the end of the accounting period unless the Medicaid group's situation or PIL changes.
(e) Continuing responsibility for medical expenses incurred before the eligibility date	(1) The Medicaid group remains responsible for medical expenses they incurred before the date of eligibility. (2) When services are received from more than one provider on the day that MABD begins, the Medicaid group must decide which services they will be responsible for paying and which ones Medicaid will cover.
(f) Deduction sequence	Medical expenses are deducted from income in the following order: (1) Health insurance expenses (see § 30.06(b)). (2) Noncovered medical expenses (see § 30.06(c)). (3) Covered medical expenses (see § 30.06(d)) that exceed limitations on amount, duration, or scope of services covered (see DVHA Rules 7201-7606). (4) Covered medical expenses (see § 30.06(d)) that do not exceed

	limitations on amount, duration or scope of services covered. These must be deducted in chronological order of the date the service was received beginning with the oldest expense.
(g) Time frames for deductions	(1) Deductible medical expenses include medical expenses incurred: (i) During the current accounting period, whether paid or unpaid; (ii) Before the current accounting period and paid in the current accounting period, or (iii) Before the current accounting period, remaining unpaid, and for which continuing liability can be established (see paragraph (i) of this § 30.06 for details on how to establish continuing liability). (2) Deductible medical expenses also include medical expenses paid during the current accounting period by a state or local program other than a program that receives Medicaid funding. (3) Medical expenses incurred before or during the accounting period and paid for by a bona fide loan, as described in (4) below, may be deducted if the expense has not been previously used to meet a spenddown requirement and the Medicaid group establishes continuing liability for the loan (see paragraph (i) of this § 30.06 for details on how to establish continuing liability) and documents that all or part of the principal amount of the loan remains outstanding at any time during the accounting period. Only the amount of the principal outstanding during the accounting period, including payments made on the principal during the accounting period, may be deducted. (4) For purposes of this subsection, a "bona fide loan" is an obligation documented from its outset by a written contract and a specified repayment schedule.
(h) Predictable expenses	In general, an expense is incurred on the date liability for the expense begins. However, there are four types of predictable medical expenses that may be deducted before they are incurred, if it can be reasonably assumed that the expense will continue during the accounting period: (1) Premiums on health insurance (see § 30.06(b)); (2) Medically necessary over-the-counter drugs and supplies (see § 30.06(c)(1)); (3) Ongoing, noncovered personal care services (see § 30.06(c)(3)); and (4) ACCS provided to an individual residing in a level III residential care home which is either: (i) Not enrolled as a Medicaid provider; or (ii) With an admission agreement specifying the resident's financial status as a privately-paying resident (see § 30.06(c)(4)).

(i) Establishing continuing liability for prior medical expenses	Continuing liability for unpaid medical expenses, including liability on a bona fide loan used to pay medical expenses, incurred before the current accounting period is established when any of the following conditions is met. The liability was incurred: (1) Within six months of the date of application or the first day of the accounting period, whichever is later. (2) More than six months before the date of application or the first day of the accounting period, whichever is later, and there is a bill for the liability dated within 90 days of that date. (3) More than six months before the date of application or the first day of the accounting period, whichever is later, and the service provider or lender has confirmed that the unpaid liability has not been forgiven and is not expected to be forgiven at any time within the current accounting period.
30.06 Allowable medical expenses (10/01/2013, 13-12F)	
(a) In general	(1) Medical expenses that are the current liability of the Medicaid group and for which no third party is legally liable may be deducted from total excess income or resources for the accounting period. (2) No medical expense may be used more than once to meet a spenddown requirement. (3) A medical expense may be used to spend down either income or resources. (4) If only a portion of a medical expense is used to meet the spenddown requirement for a given accounting period, that portion of the medical expense that was not used and remains a current liability may be applied toward a spenddown requirement in a future accounting period. (5) Upon receiving coverage, the Medicaid group remains directly responsible to providers for expenses incurred before the spenddown was met.
(b) Health insurance expenses	(1) Health insurance is insurance that covers medical care and services, such as Medicare part B, and similar group or individual policies. A deduction is allowed for health insurance premiums paid by a member of the Medicaid group if it can be reasonably assumed that health insurance coverage will continue during the accounting period. Deductions may also be allowed for other health insurance expenses, including enrollment fees and deductibles or coinsurance imposed by Medicare or other health insurance not subject to payment by a third party (such as another insurance policy). Health insurance coverage, the amount of the premium for the coverage, and any other deductible expense amounts must be verified. (2) Premiums, or other expenses, for the following types of

	insurance are not deductible: (i) Income protection or similar insurance plans designed to replace or supplement income lost due to sickness or accident; or (ii) Automobile or other liability insurance, although these may include medical benefits for the insured or their family.
(c) Expenses not covered by Medicaid	A deduction is allowed for necessary medical and remedial expenses recognized by state law but not covered by Medicaid in the absence of an exception for Medicaid coverage under DVHA Rule 7104. In determining whether a medical expense meets these criteria, AHS may require medical or other related information to verify that the service or item for which the expense was incurred was medically necessary and was a medical or remedial expense. The patient's physician shall verify medical necessity with a written statement or prescription specifying the need, quantity, and time period covered. Examples of medical expenses not covered by Medicaid include, but are not limited to, expenses for the services and items listed in (1) through (6) below. Any medical bills, including those incurred during a period of Medicaid eligibility, that are the current liability of the Medicaid group and have not been used to meet a previous spenddown requirement may be deducted from excess income. Generally, the Medicaid group is required to present a bill or receipt to verify that medical expenses have been incurred or paid.
(1) Over-the-counter drugs	
(i) In general	Either standard deductions or actual costs, if greater, may be used to deduct noncovered over-the-counter drugs and supplies.
(ii) Documentation	(A) Documentation verifying medical necessity is not required when AHS determines that an over-the-counter drug or supply is a common remedy for the medical condition of a member of the Medicaid group and the usage is within the maximum amount for common over-the-counter drugs and supplies. (B) Documentation verifying medical necessity may be required whenever one or both of the following two situations apply: (I) When the drug or supply is not a common remedy for the medical condition, or (II) When the reported usage exceeds the maximum amount.
(iii) Amount deductible	(A) Instead of actual expenses, a reasonable estimate of ongoing expenses for over-the-counter drugs and supplies may be applied prospectively to the accounting period. Reasonable estimates of unit sizes, costs and maximums for common over-the-counter drugs and supplies used to meet the spenddown requirement are found in Vermont's Medicaid Procedures Manual. (B) If a Medicaid group uses an ongoing expense to meet their spenddown requirement, they are not eligible to receive Medicaid coverage during that accounting period for the same expense.

(2) Transportation	Noncovered commercial and private transportation costs may be deducted. (i) For commercial transportation, the actual cost of the transportation, verified by receipt, may be deducted. (ii) For private transportation, either a standard deduction or the actual cost, if greater, may be used. The process set forth in Vermont's Medicaid Procedures Manual determines the deductible expense for private transportation. (iii) The cost of transportation may be deducted without verification of medical necessity provided that: (A) The transportation was essential to secure the medical service; and (B) The Medicaid group was responsible for the cost and was charged an agreed-upon fee or purchased fuel to use a family-owned vehicle or other non-commercial vehicle. (iv) Mileage reimbursement rates are the rates established by the U.S. General Services Administration. The rates fluctuate periodically. It is important to refer to the federal website in order to determine the current rate. The website is www.gsa.gov/mileage
(3) Personal care services	
(i) In general	A deduction for noncovered personal care services provided in an individual's own home or in a level IV residential care home is allowed when they are medically necessary in relation to an individual's medical condition.
(ii) Deductible personal care services	Deductible personal care services include the personal care services described in DVHA Rule 7406.2 and assistance with managing money. They also include general supervision of physical and mental well-being where a physician states such care is required due to a specific diagnosis, such as Alzheimer's disease or dementia or like debilitating diseases or injuries. Room and board is not a personal care service.
(iii) Qualified personal-care service providers	(A) Except as stated in (B) below, services may be deducted when performed by a home-health agency or other provider identified by the individual's physician as qualified to provide the service. (B) When the service provider is living in the home, deductions may not be based on payments for personal care services provided to an individual: (I) Under age 21 by the individual's parent, stepparent, or legal guardian, unless the individual is 18, 19, or 20 years old and payment for personal care services is made from and does not exceed the individual's own income or assets; (II) By the individual's spouse; (III) By the individual's sibling, child, or grandchild when the

	person providing the services is under age 18; or (IV) By a parent of the individual's minor child.
(iv) Documentation	(A) To document the need for personal care services, the provider must submit: (I) A plan of care; (II) A list of the personal care services required; (III) A statement that the services are necessary in relation to a particular medical condition; and (IV) A statement that the level of care provided by the particular level IV residential care home is appropriate or, if the individual is not living in a level IV residential care home and the services are not provided by a home health agency, that the provider is qualified to provide the service. (B) Upon the initial submission of a plan of care (form 288B), it is assumed that the individual will continue to need the personal care services for the entire accounting period, unless the plan of care has specified a date by which the individual's need for services is expected to change. (C) A new plan must be submitted: (I) Once every six months, when the provider has not specified an ongoing need for personal care services in the current plan; or (II) Once every two years, when the physician has specified an ongoing need for personal care services in the current plan. (D) A new plan must also be submitted: (I) Whenever the service provider changes, unless the service is performed by a home health agency; and (II) Whenever the need for services in relation to the individual's condition is expected to change, according to the current plan of care.
(v) Amount deductible	(A) Either standard deductions or actual costs, if greater, may be used for deducting personal-care services. Expenses that have not been incurred yet may be deducted if they are predictable and meet the requirements in § 30.05(h). Expenses also may be deducted if they have actually been incurred by the Medicaid group and are not subject to payment by Medicaid or any other third party. (B) The standard monthly deduction for personal care services shall be deducted for each full or partial calendar month in the accounting period during which the plan of care documents the need for services. The actual documented costs of personal care services may be deducted if they exceed the monthly

	standard deduction. Deductions may be made for anticipated need through the end of the accounting period. (C) All changes to these standards that result in lower standard deductions will be made via the Administrative Procedures Act.
(4) Assistive Community-Care Services (ACCS)	
(i) Deductible assistive community-care services	A deduction for noncovered assistive community care services (ACCS) provided to an individual residing in a licensed level III residential care home is allowed. The individual may also deduct medically-necessary personal-care services included under the list at DVHA Rule 7406.2 but not part of the list at DVHA Rule 7411.4.
(ii) Qualified Service Providers	(A) Qualified service providers include all level III residential care homes licensed by AHS. (B) When an individual that is a resident of a level III residential care home becomes eligible for MABD by projecting the cost of ACCS across part of the accounting period, the residential care home may agree to function as a Medicaid provider for ACCS with respect to that resident for the remainder of their accounting period. In these cases, the provider may bill for ACCS services no sooner than the ACCS coverage date given to the resident and the provider in a notice from AHS. (C) When a privately-paying resident of a level III residential care home becomes eligible for MABD after having met a spenddown requirement by projecting the cost of ACCS across the entire accounting period, the residential care home shall not function as a Medicaid provider for ACCS with respect to that resident during the period when the resident is meeting the spenddown requirement.
(iii) Documentation	(A) Documentation verifying medical necessity is not required for ACCS. If an individual claims a deduction for medically-necessary personal-care services included under the list at DVHA Rule 7406.2 but not part of the list at DVHA Rule 7411.4 the individual's physician must submit: (I) A plan of care (form 288B); (II) A list of the personal care services required; (III) A statement that the services are necessary in relation to a particular medical condition; and (IV) A statement that the level of care provided by the particular level III residential care home is appropriate and that the provider is qualified to provide the service. (B) Upon the initial submission of a plan of care, it is assumed that the individual will continue to need the personal care services for the entire accounting period, unless the plan of care has specified a date by which the individual's need for services is

	expected to change. (C) An individual with an approved personal care services deduction must submit new plans at the same frequencies specified under paragraph (c)(3)(iv) of this subsection.
(iv) Amount deductible	(A) The deduction for ACCS may be used for the entire accounting period or part of it. Whether the standard daily or monthly deduction is used depends on the size of the spenddown requirement. The actual documented costs of ACCS may be deducted if they exceed the monthly standard deduction. Deductions may be made for anticipated need through the end of the accounting period. All changes in these standards that result in lower standard deductions will be made via the Administrative Procedures Act. (B) If the Medicaid group's excess income and resources after deduction of all expenses for which Medicaid coverage is not available equal or exceed the deduction for ACCS for the entire accounting period, for the purposes of meeting a spenddown requirement, ACCS are projected and deducted as if they were not Medicaid-covered services for the entire accounting period. Medicaid eligibility for services other than ACCS becomes effective on the day the spenddown requirement is met. Expenses for which Medicaid coverage is not available are: (I) Medical expenses excluded from coverage; (II) Covered medical expenses incurred prior to the accounting period, not used to meet a previous spenddown requirement, and remaining unpaid; and (III) Covered medical expenses incurred and paid during the current accounting period. (C) If the Medicaid group's excess income and resources after deduction of all expenses for which Medicaid coverage is not available are less than the deduction for ACCS for the entire accounting period, ACCS expenses are not projected. Instead, they are deducted as covered expenses on a daily basis. In this case, Medicaid eligibility for all covered services other than ACCS becomes effective the first day of the accounting period. Medicaid coverage for ACCS begins later. It starts the day cumulative daily ACCS deductions exceed the Medicaid group's remaining excess income and resources. The Medicaid group is not responsible for payment of a portion of the ACCS expense on the first day of ACCS eligibility. (D) In addition, the amount of the deduction for any services included under the list at DVHA rule 7406.2 but not part of the list at DVHA rule 7411.4 documented as medically necessary by the plan of care is determined based on the number of hours times minimum wage, or actual costs, if greater.
(5) Dental services	Dental services in excess of the allowable annual maximum may be deducted.

(6) Private-duty nursing services	Private-duty nursing services for an individual age 21 and older may be deducted.
(d) Expenses for covered medical services	(1) A covered medical service is any medical service that Medicaid would pay for if the individual were enrolled in Medicaid (see DVHA Rules 7201–7606). (2) Deductions for covered medical services are not limited to the Medicaid reimbursement for the service. The actual cost paid or incurred is allowed. A standard deduction may be taken for ACCS (see DVHA Rule 7411.4), as set forth in Vermont's Medicaid Procedures Manual.
(e) Third-party coverage	(1) No deduction is allowed if the medical expense is subject to payment by a third party such as health insurance, worker's compensation, liability award, or other benefit program unless the third party is a state or local program other than Medicaid. (2) When a third party is liable for all or some medical expenses, only the portion owed by the Medicaid group may be deducted. AHS is required to take reasonable measures to determine the legal liability of third parties to pay for incurred expenses. Estimates of payment by the third party may be used if actual third party liability cannot be ascertained within the period for determining Medicaid eligibility. An eligibility determination may not be delayed simply because actual third party liability cannot be ascertained or payment by the third party has not been received. (3) If an individual is pursuing a liability award, but liability has not yet been established, a deduction is allowed. Eligibility must be based on AHS's estimate of the amount the individual owes for the bill.

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Part Six
Small Employer Health-Benefits Program Rules

31.00 Definitions (10/01/2013, 13-12F)

	As used in this part, the following terms have the following meanings:
Annual employee open enrollment period[1]	A standardized period of not less than 30 days, except for the initial employee enrollment period, in which a qualified employee may select a qualified health plan and if offered by the employer stand alone dental coverage for himself or herself and for any dependents if the employer offers dental coverage. The annual employee open enrollment precedes in all cases the completion of the applicable qualified employer's plan year and follows the employer annual election period.
Applicable large employer	With respect to a calendar year, is an employer that employed an average of at least 50 full-time employees (including full-time equivalent employees) on business days during the preceding calendar year. Federal tax rules employ this term to define which employers may be liable for employer shared responsibility for health coverage payments. Some small employers under VHC rules for small group eligibility may, under federal rules for shared responsibility payments, be applicable large employers.
Dependent	Any individual who is or may become eligible for coverage under the terms of a group health plan because of a relationship to a participant.[2]
Employee[3]	Any individual employed by an employer. An employee does not include a sole proprietor or the sole proprietor's spouse or dependents, or business partners.
Employer[4]	(a) The term "employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity. (b) Such term includes employers with one or more employees, and (c) All persons treated as a single employer such as a controlled group of corporations; partnerships, proprietorships, etc., which are under common control; affiliated service groups; and other arrangements such as separate organizations and employee leasing arrangements.[5]

[1] 45 CFR § 155.725(e)

[2] 45 CFR § 144.103.

[3] 45 CFR § 155.20. [45 CFR §155.20 applies the definition in 42 U.S.C. 300gg-91(d)(6) which applies the definition in 29 U.S.C. §1002(6). 29 CFR § 2510.3–3.provides by example that a plan under which only partners or only a sole proprietor are participants covered under the plan will not be covered under title I of ERISA.]

[4] 45 CFR § 155.20. [Applies the definition in PHSA §2791, 42 U.S.C. 300gg-91(d)(5) which applies the definition in 29 U.S.C. §1002(5).]

[5] 26 U.S.C. § 414.

Employer election period[6]	A period of 30 days, except for the initial employer election period, during which the qualified employer may change its participation in VHC for the next plan year. The employer election period comes before both the employee open enrollment period and the completion of the employer's plan year,
Full-time employee[7]	With respect to any month, an employee who is employed on average at least 30 hours of service per week, for effective plan years beginning on or after January 1, 2014.
Initial employer election period	A period beginning 3 months prior to the desired coverage effective date for the desired coverage month, and before the initial employee open enrollment period, in which the qualified employer may define its participation in VHC for the plan year. Example1: For coverage effective January 1, 2014, the initial employer election period begins October 1, 2013. Example 2: For coverage effective February 1, 2014, the initial employer election period begins November 1, 2013. Example 3: For coverage effective June 1, 2014, the initial employer election period begins March 1, 2014.
Qualified employee[8]	An employee made eligible to enroll in coverage through VHC by the receiving of an offer of coverage from a qualified employer.
Qualified employer[9]	A qualified employer is: (a) For plan years beginning on or after January 1, 2014, ending by December 31, 2015, a small employer which employed an average of not more than 50 full-time employees on working days during the preceding calendar year; and (1) Has its principal place of business in Vermont, and elects to provide coverage for all full-time employees of such employer through VHC, regardless of where an employee resides; or (2) Elects to provide coverage through VHC for all of its full-time employees who are principally employed in Vermont, and if not principally employed in Vermont, to each full-time employee through the small business health options program (SHOP) serving that

[6] 45 CFR § 155.725(c).

[7] 45 CFR § 155.20.

[8] 45 CFR §155.20.

[9] 33 V.S.A.§§1802, 1804; 45 CFR § 155.710, 26 U.S.C 4980H(c)(2)(B)(ii) provides that an employer shall not be considered to employ more than 50 full-time employees if the employer's workforce exceeds 50 full-time employees for 120 days or fewer during the calendar year, and the employees in excess of 50 employed during such 120-day period were seasonal workers.

	employee's primary worksite. (b) For the 2016, plan year beginning on January 1, 2016 and ending on December 31, 2016, a small employer which employed an average of not more than 100 employees on business days during the preceding calendar year, and meets the other requirements under paragraphs (a)(1) and (2) of this section. (c) For the 2016, plan year, beginning on January 1, 2016 and ending on December 31, 2016, the number of employees shall be calculated using the full-time equivalent method provided in § 34.00. (d) For plan years beginning on or after January 1, 2017, any employer meeting the requirements of paragraphs (a)(1) and (2) of this section, regardless of size.[10] Example 1: A New Hampshire business has 45 full time and 6 part-time employees in two locations, one location is in NH the other location is in Vermont. 38 full time and 5 part time employees work in the NH location, and 7 full time employees and 1 part time employee have their primary worksite in Vermont. Of the seven full time employees whose primary worksite is in VT, five reside in VT, two reside in New York; and the part time employee resides in VT. The NH business under Vermont rules for counting the number of employees of a small employer is a small employer. Under (a)(2) the NH employer may be a qualified employer if it offers coverage on VHC to the seven full time employees, and offers coverage in NH to the 35 full time employees located there.
Seasonal employee[11]	An employee who performs labor or services on a seasonal basis as defined by the Secretary of Labor, including workers covered by 29 CFR § 500.20(s)(1) and retail workers employed exclusively during holiday seasons.
Small employer[12]	(a) Until January 1, 2016, an entity which employed an average of not more than 50 employees on working days during the preceding calendar year. The term includes self-employed persons to the extent permitted under the Affordable Care Act. Calculation of the number of employees of a small employer shall not include a part-time employee who works on average fewer than 30 hours per week. An employer may continue to participate in VHC even if the employer's size grows beyond 50 employees as long as the employer continuously makes qualified health benefit plans in VHC available to its employees. (b) Beginning on January 1, 2016, an entity which employed an average of not more than 100 employees on working days during the preceding calendar year. The term includes self-employed persons to the extent permitted under the Affordable Care Act. The number of employees shall be calculated using the full time equivalent method set forth in section 34.00(b)(2).

32.00 Employer eligibility (10/01/2013, 13-12F)

[10] 33 V.S.A. § 1802(5).

[11] 26 USC § 4980H(c)(2)(B).

[12] 45 CFR §155.20; 33 V.S.A. §§1804, 1811(a)(3).

(a) Employer eligibility requirements[13]	(1) Before permitting the purchase of coverage in a QHP, VHC must determine that the employer who requests coverage is eligible in accordance with the requirements of §§ 31.00, and 32.00(b). (2) Only a qualified employer as defined in section 31.00 is eligible to purchase coverage through VHC.
(b) Employer's continuing eligibility[14]	A qualified employer which ceases to be a small employer solely because of an increase in the number of employees shall continue to be treated as a qualified employer until the qualified employer otherwise fails to meet eligibility criteria or elects to no longer purchase coverage for qualified employees through VHC.
(c) Employer application[15]	(1) VHC must use a single application to determine employer eligibility and to collect information necessary for purchasing coverage. Such application must collect the following: (i) Employer name and address of employer's locations; (ii) Number of full time employees; (iii) Employer Identification Number (EIN); and (iv) A list of qualified employees and their taxpayer identification numbers. (2) VHC may use the model single employer application provided by HHS. (3) VHC may use an alternative application if such application is approved by HHS and collects the information in paragraph (c)(1) of this section.
(d) Filing the application[16]	VHC must provide the tools to file an application (1) Via an Internet Web site; (2) By telephone through a call center; (3) By mail; and (4) In person, with reasonable accommodations for those with disabilities.
(e) Verification of eligibility.[17]	For the purpose of verifying employer eligibility VHC: (1) May establish, in addition to or in lieu of reliance on the employer application, additional methods to verify the information provided by the employer on the

[13] 45 CFR § 155.710(b)(2), § 155.715(a).

[14] 45 CFR § 155.710(d).

[15] 45 CFR § 155.730(b), (d), (e).

[16] 45 CFR § 155.405(c)

[17] 45 CFR § 155.715(c).

	application; and (2) Must collect only the minimum information necessary for verification of eligibility in accordance with the eligibility standards described in §§ 31.00, and 32.00(a).
(f) Eligibility adjustment period[18]	When the information submitted on the VHC employer application is inconsistent with the eligibility definitions and standards described in §§ 31.00, 32.00(b), and 33.00, VHC must: (1) Make a reasonable effort to identify and address the causes of such inconsistency, including as a result of typographical or other clerical errors; (2) Notify the employer of the inconsistency; (3) Provide the employer with a period of 30 days from the date on which the notice described in paragraph (f)(1)(2) of this section is sent to the employer to either present satisfactory documentary evidence to support the employer's application, or resolve the inconsistency; and (4) If, after the 30-day period described in paragraph (c) VHC has not received satisfactory documentary evidence, VHC must: (v) Notify the employer of its denial of eligibility in accordance with this subsection, 32.00(f), and of the employer's right to appeal such determination; and (vi) If the employer was enrolled pending the confirmation or verification of eligibility information, discontinue the employer's participation in VHC at the end of the month following the month in which the notice is sent.
(g) Notice of employer eligibility determination[19]	(1) VHC must provide an employer applying for eligibility to purchase coverage on VHC with a notice of approval or denial of eligibility, and the employer's right to appeal such eligibility determination. (2) Such notice must be issued within 15 days of the application's postmark if submitted by mail, or within 2 days if the application is submitted through the VHC website.
33.00 Employee eligibility (10/01/2013, 13-12F)	
(a) Eligibility to enroll in VHC[20]	(1) A qualified employee is eligible to enroll in employer sponsored coverage through VHC if that employee receives an offer of coverage from a qualified employer. (2) A sole proprietor who is a qualified employer may participate and enroll in any qualified health plan that it is sponsoring for at least one qualified employee. (3) A member of a partnership which is a qualified employer may participate and enroll in any qualified health plan that it is sponsoring for at least one qualified employee.
(b) Enrollment in	A qualified employee is not obligated to enroll in the employer's sponsored plan, but unless

[18] 45 CFR § 155.715(d).

[19] 45 CFR § 155.715(e).

[20] 45 CFR § 155.710(e).

employer's sponsored plan not required[21]	exempt[22], must maintain minimum essential coverage for himself or herself and any nonexempt family members, or must include an additional payment with his or her federal income tax return.
(c) Employee application[23]	(1) VHC must use a single application for eligibility determination, QHP selection, and enrollment for qualified employees, and their dependents (if the employer offers dependent coverage). (2) VHC may use the model single employee application provided by HHS. (3) VHC may use an alternative application if such application is approved by HHS and collects the information necessary to establish eligibility of the employee as a qualified employee and to complete the enrollment of the qualified employee and any dependents to be enrolled.
(d) Employee application verification[24]	For the purpose of verifying employer and employee eligibility, VHC (1) Must verify that an individual applicant is identified by the employer as an employee to whom the qualified employer has offered coverage and must otherwise accept the information attested to within the application unless the information is inconsistent with the employer-provided information; (2) May establish, in addition to or in lieu of reliance on the application, additional methods to verify the information provided by the applicant on the applicable application; and (3) Must collect only the minimum information necessary for verification of eligibility in accordance with the eligibility standards described in § 33.00(a).
(e) Eligibility adjustment period.[25]	For an employee requesting eligibility to enroll in a QHP through VHC for whom VHC receives information on the application inconsistent with the employer provided information, VHC must— (1) Make a reasonable effort to identify and address the causes of such inconsistency, including as a result of typographical or other clerical errors; (2) Notify the individual of the inability to substantiate his or her employee status; (3) Provide the employee with a period of 30 days from the date on which the notice described in subsection (b) is sent to the employee to either present satisfactory documentary evidence to support the employee's application, or resolve the inconsistency; and (4) If, after the 30-day period described in subsection (c), VHC has not received satisfactory documentary evidence, VHC must notify the employee of its denial of

[21] 26 U.S.C. 5000A.

[22] Proposed rules 45 CFR §§155.600, 155.605, 78 FR 7367.

[23] 45 CFR § 155.730(c), (d), (e).

[24] 45 CFR § 155.715(c).

[25] 45 CFR § 155.715(d).

	eligibility in accordance with this subsection, 33.00(g).
(f) Employee information safeguarded[26]	VHC shall not provide to the employer any information collected on the employee application with respect to spouses or dependents other than the name, address, and birth date of the spouse or dependent.
(g) Notification of employee eligibility.[27]	Within 1 – 2 weeks of the application date, VHC must notify an employee seeking to enroll in a QHP offered through VHC of the determination by the VHC whether the individual is eligible and the employee's right to appeal such determination. VHC will send notifications of employee eligibility to the employer.
34.00 Method for counting employees for purposes of determining employer eligibility (10/01/2013, 13-12F)	
(a) Plan years beginning on or after January 1, 2014 through December 31, 2015[28]	(1) For plan years beginning on or after January 1, 2014 through December 31, 2015, employees who perform labor or services 30 hours or more per week with respect to any month shall be counted as a full time employee, except for seasonal or variable hour employees. (2) The aggregate number of hours of service of employees who are not full-time employees shall not be included in the calculation.
(b) Plan years beginning on or after January 1, 2016[29]	(1) From January 1, 2016, the number of employees shall be calculated using the federal full time equivalent method. (2) An employer shall in addition to the number of full-time employees for any month include for such month a number of full-time equivalent employees determined by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120.
(c) How seasonal employees are counted.[30]	(1) For plan years beginning on or after January 1, 2014 through December 31, 2015, a seasonal employee shall not be counted as a full time employee for purposes of employer eligibility. (2) Seasonal employees shall be counted according to federal regulations and guidelines

[26] 45 CFR § 155.730(g).

[27] 45 CFR § 155.715(f).

[28] 45 CFR § 155.20; 33 V.S.A. 1811(a)(3).

[29] 78 FR 15503, preamble 45 CFR § 155.20; 26 U.S.C § 4980H(c)(2), this method of determining small employer eligibility will be reevaluated by HHS before 2016 based on the experience of other states across the country where it will become effective for the 2014 plan year.

[30] 78 FR 15503, preamble 45 CFR § 155.20. During 2014 and 2015 an employer and VHC may adopt a reasonable basis for their determination of whether an employer has met the requirement to offer coverage to all full-time employees. A reasonable basis may be the federal definition from section 4980H of Chapter 43 of the Internal Revenue Code. The preamble to proposed rules at 78 FR 220, 239, 248, provides that employers will be permitted to rely on the proposed regulations for shared responsibility for employers regarding health coverage pending the issuance of final regulations or other guidance. The relevant proposed rules are 26 CFR Part 54, Sections 54.4980H-0, 54.4980H-1, 54.4980H-2, 54.4980H-3, 54.4980H-4, 54.4980H-5, and 54.4980H-6.

	for plan years beginning on or after January 1, 2016.
35.00 Employer choice[31] (10/01/2013, 13-12F)	
Two models of employer choice	(a) A qualified employer may offer QHPs on VHC to its employees and at the employer's option to the employees' dependents in one of the following ways: (1) Permitting the qualified employee to select any plan from among all QHPs offered on VHC; or (2) Permitting the qualified employee to select any QHP offered on VHC by one issuer of the employer's choice; (b) A qualified employer may choose to offer in addition to QHPs any stand-alone dental plans offered on VHC to its eligible employees and at the employer's option to their dependents.
36.00 Employee enrollment waiting periods[32] (10/01/2013, 13-12F)	
	(a) A group health plan or health insurance issuer offering group health insurance coverage shall not apply any enrollment waiting period that exceeds 90 days. (b) Eligibility conditions that are based solely on the lapse of a time period are permissible for no more than 90 days. (c) [Reserved]
37.00 Short plan years[33] (10/01/2013, 13-12F)	
	(a) Qualified employers' plan years must be on a calendar year term beginning January 1, 2015. (1) Small groups may renew their plans in 2013 for 12 months. (2) In 2014 small employers must be qualified employers in order to enroll in a QHP. QHP years beginning after January 1, 2014, will have a shortened plan year ending on December 31, 2014. (b) Employers who elect a short plan year during 2013 may apply for QHP coverage effective January 1, 2014, by participating in the initial employer election period beginning October 1, 2013. (c) Carriers may carry over accumulated claims from the 2014 short plan year against the deductible and out-of-pocket amounts to the 2015 plan year.

[31] 45 CFR § 155.705(b)(2-3).

[32] DOL Technical Release No. 2012-02, Aug 31, 2012.

[33] Applicable to merged markets.

38.00	**Employer election period (10/01/2013, 13-12F)**
(a) Employer election period, generally	(1) Federal regulations describe the enrollment process from the time the employer creates an account to the time employee plan selections are effectuated as having two periods: an employer election period, and an employee enrollment period. (2) The employer election period is the start of the whole enrollment process and entails creating an online account and filling out an application. (3) As part of the application the employer must submit the names, and other necessary information of the employees to whom the employer is offering coverage. (4) Upon completion of the application Vermont Health Connect will make an eligibility determination and notify both the employer and the employees whom the employer identified on the application. (5) The notification of employees begins the second period referred to as the employee enrollment period.
(b) Decisions during election period[34]	(1) Qualified employers generally have an election period in which the qualified employer may define its participation in VHC for the next plan year. (2) During the election period employers will be able to go on the VHC website and use the available tools for assistance in deciding whether to offer their employees group health coverage. (3) During this period employers will be able to submit an application to VHC to become eligible to offer qualified health plans through VHC. (4) During this period the employer will select: (i) The method by which the qualified employer makes QHPs available to qualified employees (see: employer choice, section 35.00); (ii) The employees to whom it will offer coverage; (A) In order to be eligible to purchase coverage on VHC the employer must offer coverage to all its full-time employees, (B) An employer may offer coverage to part-time employees, (iii) Whether to offer coverage to the qualified employee's dependents; (iv) Whether to offer stand-alone dental coverage; (v) Whether the individual owners will participate in an employees' plan; and (vi) The amount of its contribution towards the premium cost of each employee's coverage, i.e., single, two-person, adult plus dependent, or family.
(c) Timing of initial	For the 2014 plan year effective January 1, 2014, the employer election period begins October

[34] 45 CFR § 155.725(c).

election period for plan years beginning January 1, 2014	1, 2013. In the initial employer election period employers will have the flexibility to take as much time as needed to give employees the time necessary for the employees to go online, create an account, compare plans, and select a QHP, and a dental plan if offered.
(d) Timing of initial election period for a short 2014 plan year, beginning the first of any month from February 1, 2014, through December 1, 2014.	(1) VHC must permit a qualified employer to purchase coverage for its small group beginning on the first of any month during the year. (2) [Reserved]
(e) Timing of annual election period for plan years beginning January 1, 2015, and subsequent plan years.	(1) Qualified employers' plan years must be on a calendar year term beginning January 1, 2015. (2) For plan years beginning January 1, 2015, the annual election period shall be 30 days and shall begin September 15, 2014. (3) For subsequent plan years, the annual election period shall begin September 15 of the year preceding the plan year.
(f) Notice of election period[35]	VHC shall notify a qualified employer of the annual election period 30 days in advance of the start of the employer election period for the 2015 plan year and subsequent plan years.
(g) Rolling enrollment[36]	VHC must permit a qualified employer to purchase coverage for its small group beginning on the first of any month during the year.
39.00 Employee enrollment periods[37] (10/01/2013, 13-12F)	
(a) Employee enrollment periods, generally	During the period for qualified employers to purchase coverage for their qualified employees, employees will have the opportunity to compare the plans offered on VHC and select a plan, and a dental plan if offered by the employer.
(b) Open enrollment periods	VHC may only permit a qualified employee to enroll in a QHP or an enrollee to change QHPs during initial, annual, or special open enrollment periods. (1) After a qualified employer notifies its qualified employees that they are being offered health coverage on VHC, the qualified employee will have an open enrollment period in which to: (i) Create an account;

[35] 45 CFR § 155.725(d).

[36] 45 CFR § 155.725(b).

[37] 45 CFR §155.410; §45 CFR §155.725.

	(ii) Receive assistance from VHC in completing the application; (iii) Select QHPs, and if offered by the employer, stand-alone dental coverage for himself/herself, and dependents, if the qualified employer offers coverage to dependents; and (iv) Complete the enrollment application. (2) Enrollment will be effectuated once the issuer has received full payment from the employer. (i) VHC will issue invoices on December 1, 2013 for January 1, 2014, coverage. (ii) Only employees' plans selected by November 30, 2013 will be included in the December 1, 2013 invoice. (iii) . (iv) If full payment for the December 1, 2013 invoice is not received by December 31, 2013 coverage will not be effective for January 1, 2014. (3) The qualified employee will be able to use tools on the VHC website to estimate whether the coverage offered by the employer meets applicable federal affordability standards. (i) The qualified employee will have the opportunity to exit the employee application and request an affordability determination on the VHC website; and (ii) If the coverage is determined to not be affordable under federal standards the employee may apply for an eligibility determination to purchase coverage as a qualified individual instead of as a qualified employee. (See § 3.00 qualified individual.)
(c) Initial open enrollment period for enrollment in a QHP with enrollment effective January 1, 2014[38]	For the 2014 plan year the employee enrollment period will begin as soon as their employers notify them that VHC has determined that they are eligible.
(d) Initial open enrollment period for enrollment in a QHP with enrollment effective dates for subsequent months in 2014.	For plans that were renewed in 2013 for twelve months, the employee initial open enrollment period begins as soon as their employers notify them that VHC has determined that they are eligible.
(e) Annual open	Annual open enrollment for 2015 plan years and every plan year afterward will begin between

[38] 45 CFR §155.725(a); §155.410(b).

enrollment period[39]	October 15 and November 6, and end December 7 of the preceding year.
(f) Notice of annual open enrollment period[40]	VHC must provide notification to a qualified employee of the annual open enrollment period 30 days in advance of the open enrollment period.
(g) Newly qualified employees special enrollment period[41]	For an employee who becomes a qualified employee outside of the initial or annual open enrollment period, the 30-day open enrollment period begins on the first day of becoming a qualified employee.

40.00 Special employee enrollment periods (10/01/2013, 13-12F)

(a) Events resulting in a special enrollment period[42]	(1) VHC must allow qualified employees or their dependents to enroll in or change from one QHP to another as a result of the following triggering events: (i) A qualified employee or dependent (when eligible for employer coverage) loses minimum essential coverage (see 40.00(c), (d), and (e)); (ii) A qualified employee gains a dependent or becomes a dependent through marriage, birth, adoption, or placement for adoption; (iii) A qualified employee's enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of VHC or HHS, or its instrumentalities as evaluated and determined by VHC. In such cases, VHC may take such action as necessary to correct or eliminate the effects of such error, misrepresentation, or inaction; (iv) A qualified employee or dependent adequately demonstrates to VHC that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee; (v) A qualified employee or dependent gains access to new QHPs as a result of a move into Vermont that establishes residence; (vi) An Indian, as defined by section 4 of the Indian Health Care Improvement Act, who is a qualified employee or dependent may enroll in a QHP or change from one QHP to another one time per month; (vii) A qualified employee or dependent demonstrates to VHC, in accordance with guidelines issued by HHS, that the enrollee meets other exceptional circumstances including;

[39] 45 CFR §155.725(e).

[40] 45 CFR §155.725(f).

[41] 45 CFR §155.725(g).

[42] Proposed rule, CMS-9964-P2, Small Business Health Options Program, 45 CFR §155.725(j).

	(A) An employee or dependent's enrollment or non-enrollment in a QHP was unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of navigators, agents or brokers, as evaluated and determined by VHC. (B) In such cases, VHC may trigger the SEP and take such action as may be necessary to correct or eliminate the effects of such error, misrepresentation, or inaction; and (viii) A qualified employee or dependent loses eligibility for coverage under a Medicaid plan under title XIX of the Social Security Act or a state child health plan under title XXI of the Social Security Act; or (ix) A qualified employee or dependent becomes eligible for premium assistance with a small employer plan under such Medicaid plan or a state child health plan (including any waiver or demonstration project conducted under or in relation to such a plan). (2) A dependent of a qualified employee is not eligible for a special enrollment period if the employer does not extend the offer of coverage to dependents.
(b) Duration of special enrollment periods[43]	A qualified employee or dependent of a qualified employee who experiences a qualifying event described above has 60 days from the date of a triggering event to select a QHP through VHC.
(c) Loss of minimum essential coverage.[44]	A qualified employee or dependent who has coverage that is not COBRA continuation coverage, has a loss of minimum essential coverage at the time the coverage is terminated as a result of loss of eligibility (regardless of whether the individual is eligible for or elects COBRA continuation coverage). (1) Loss of eligibility for coverage includes (but is not limited to): (i) Loss of eligibility for coverage as a result of legal separation, divorce, cessation of dependent status (such as attaining the maximum age to be eligible as a dependent child under the plan), death of an employee, termination of employment, reduction in the number of hours of employment, and any loss of eligibility for coverage after a period that is measured by reference to any of the foregoing; (ii) In the case of coverage offered through an HMO, or other arrangement, in the individual market that does not provide benefits to individuals who no longer reside, live, or work in a service area, loss of coverage because an individual no longer resides, lives, or works in the service area (whether or not within the choice of the individual); (iii) In the case of coverage offered through an HMO, or other arrangement, in the group market that does not provide benefits to individuals who no longer reside, live, or work in a service area, loss of coverage because an individual no longer resides, lives, or works in the service area (whether or not within the choice of the individual), and no other benefit package is available to the individual; and

[43] Proposed rule, CMS-9964-P2, Small Business Health Options Program, 45 CFR §155.725(j).

[44] Proposed rule, CMS-9964-P2, Small Business Health Options Program, 45 CFR §155.725(j); 45 CFR § 155.420(e); 26 CFR § 54.9801-6(a)(3)(i-iii).

	(iv) A situation in which a plan no longer offers any benefits to the class of similarly situated individuals that includes the individual.[45] (2) In the case of an employee or dependent who has coverage that is not COBRA continuation coverage at the time employer contributions towards the employee's or dependent's coverage terminate. Employer contributions include contributions by any current or former employer that was contributing to coverage for the employee or dependent.
(d) Loss of COBRA continuation coverage	An employee or dependent loses eligibility for minimum essential coverage, and is entitled to a special enrollment period as provided under 40.00(a)(1)(i) when she or he is otherwise eligible for a special enrollment period, does not enroll as an individual into a QHP, and instead elects and exhausts COBRA continuation coverage.[46] Exhaustion of COBRA coverage includes dropping COBRA coverage as long as the qualified individual is otherwise eligible for APTC.
(e) Not included in loss of minimum essential coverage.[47]	Loss of minimum essential coverage does not include termination or loss due to: (1) Failure of the employee or dependent to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or (2) Termination of coverage for cause (such as making a fraudulent claim or an intentional misrepresentation of a material fact in connection with the plan), or for situations allowing for a rescission as specified in 45 CFR §147.128.
(f) Rescissions[48]	Loss of minimum essential coverage does not include a rescission. (1) A rescission is a cancellation or discontinuance of coverage that has retroactive effect. For example, a cancellation that treats a policy as void from the time of the individual's or group's enrollment is a rescission. As another example, a cancellation that voids benefits paid up to a year before the cancellation is also a rescission for this purpose. A cancellation or discontinuance of coverage is not a rescission if: (i) The cancellation or discontinuance of coverage has only a prospective effect; or (ii) The cancellation or discontinuance of coverage is effective retroactively to the extent it is attributable to a failure to timely pay required premiums or contributions towards the cost of coverage. (2) Prohibition on rescissions: (i) A group health plan, or a health insurance issuer offering group or individual health insurance coverage, must not rescind coverage under the plan, or under the policy, certificate, or contract of insurance, with respect to an individual (including a group to which the individual belongs or family coverage in which the individual is included)

[45] 26 CFR § 54.9802-1(d).

[46] 26 CFR § 54.9801-2, exhaustion of COBRA continuation coverage is defined in 26 CFR § 54.9801-2.

[47] Proposed rule, CMS-9964-P2, Small Business Health Options Program, 45 CFR §155.725(j); 45 CFR § 155.420(e); 26 CFR § 54.9801-6(a)(3)(i-iii).

[48] Proposed rule, CMS-9964-P2, Small Business Health Options Program, 45 CFR §155.725(j); 45 CFR § 155.420(e); 26 CFR § 54.9801-6(a)(3)(i-iii); 45 CFR §147.128.

	once the individual is covered under the plan or coverage, unless the individual (or a person seeking coverage on behalf of the individual) performs an act, practice, or omission that constitutes fraud, or unless the individual makes an intentional misrepresentation of material fact, as prohibited by the terms of the plan or coverage. (ii) A group health plan, or a health insurance issuer offering group or individual health insurance coverage, must provide at least 30 days advance written notice to each participant (in the individual market, primary subscriber) who would be affected before coverage may be rescinded regardless of, in the case of group coverage whether the rescission applies to an entire group or only to an individual within the group.
41.00 Coverage effective dates[49] (10/01/2013, 13-12F)	
(a) Coverage effective January 1, 2014	(1) VHC must ensure a coverage effective date of January 1, 2014, for full payment of the invoice amount postmarked by December 10, 2013. (2) Employers remitting payment electronically will have more time. VHC must ensure a coverage effective date of January 1, 2014, for payment received by credit card or electronic funds transfer on or before December 15, 2013. (3) VHC will make every effort to work with carriers to make coverage effective for January 1, 2014, where payment is postmarked after December 10, or received electronically after December 16, 2013.
(b) Coverage effective dates generally, for plan years beginning on or after January 1, 2015	VHC shall ensure that for a QHP selection received by VHC from a qualified employee on or before December 7 for plan years beginning January 1, 2015, and subsequent years, QHP issuers adhere to January 1 coverage effective dates.
(c) Special enrollment coverage dates[50]	(1) In the case of birth, adoption or placement for adoption, VHC must ensure that coverage is effective on the date of birth, adoption, or placement for adoption; and (2) In the case of marriage VHC must ensure coverage is effective on the first day of the following month. (3) In the case where a qualified employee loses minimum essential coverage, VHC must ensure coverage is effective on the first day of the following month. (4) Option for earlier effective dates. Subject to VHC demonstrating to HHS that all of its participating QHP issuers agree to effectuate coverage in a timeframe shorter than discussed in paragraph 71.03(b)(1) or 71.03(b)(2)(ii) for a QHP selection received by VHC from a qualified employee on a date set by VHC after the fifteenth of the month, VHC may provide a coverage effective date of the first of the following month.

[49] 45 CFR § 155.725(a)(2), §155.260, §155.410(c).

[50] Proposed rule, CMS-9964-P2, Small Business Health Options Program, 45 CFR §155.725(j); 45 CFR § 155.420(b)

(d) Notification of effective date[51]	VHC must ensure that a QHP issuer notifies a qualified employee enrolled in a QHP of the effective date of coverage.
42.00 [Reserved] (10/01/2013, 13-12F)	
43.00 Employer contributions to cost-sharing through HSAs or HRAs (10/01/2013, 13-12F)	
	HRAs and HSAs may be used in conjunction with a QHP as permitted by IRS regulations.
44.00 Renewal[52] (10/01/2013, 13-12F)	
	(a) If a qualified employee enrolled in a QHP through VHC remains eligible for coverage, such employee will remain in the QHP selected the previous year unless: (b) The qualified employee terminates coverage from such QHP in accordance with standards identified in section 45.00; (c) The qualified employee enrolls in another QHP; or (d) The QHP is no longer available to the qualified employee.
45.00 Termination of coverage by employee[53] (10/01/2013, 13-12F)	
(a) Termination events[54]	(1) VHC must permit an employee to terminate his or her coverage in a QHP, including as a result of the employee obtaining other minimum essential coverage, with reasonable notice to VHC or the QHP. (2) Reasonable notice is defined as 14 days from the requested effective date of termination.
(b) Termination effective date[55]	The last day of coverage is: (1) The termination date specified by the employee, if the employee provides reasonable notice; (2) Fourteen days after the termination is requested by the employee, if the employee does not provide reasonable notice; or (3) On a date determined by the employee's QHP issuer, if the employee's QHP issuer is

[51] 45 CFR §155.720(e).

[52] 45 CFR §155.725(i).

[53] 45 CFR §155.275(i).

[54] 45 CFR §155.430(b), (d).

[55] 45 CFR §155.430(d).

	able to effectuate termination in fewer than 14 days and the employee requests an earlier termination effective date. (4) If the employee is newly eligible for Medicaid, the last day of coverage is the day before such coverage begins.
(c) Employer notification	If any employee terminates coverage from a QHP, VHC must notify the employee's employer.[56]
46.00 Employer withdrawal from VHC[57] (10/01/2013, 13-12F)	
	If a qualified employer ceases to purchase coverage through VHC, VHC must ensure that: (a) Each QHP issuer terminates the coverage of the employer's qualified employees enrolled in the QHP through VHC; and (b) Each of the employer's qualified employees enrolled in a QHP through VHC is notified by the QHP issuer of the termination of coverage prior to such termination. Such notification must also provide information about other potential sources of coverage, including access to individual market coverage through VHC.
47.00 Termination of Coverage by Issuer (10/01/2013, 13-12F)	
(a) Conditions under which QHP issuer may terminate coverage[58]	VHC may initiate termination of an enrollee's coverage and must permit a QHP issuer to terminate an enrollee's coverage in the following circumstances: (1) The enrollee is no longer eligible for coverage in a QHP through VHC; (2) Non-payment of premiums for coverage of the enrollee; (3) The enrollee's coverage is rescinded in accordance with section 40.00(f); or (4) The QHP terminates or is decertified.

[56] 45 CFR §155.720(h).

[57] 45 CFR § 155.715(g).

[58] 45 CFR §156.270(a), §155.430(b,) 45 CFR §156.285(d).

(b) Termination of coverage due to non-payment of premium[59]	(1) QHP issuers must apply a standard policy to all small groups for the termination of coverage of enrollees due to non-payment of premium. (2) A non-payment occurs when full payment has not been received by the last day of the month.
(c) Notice of termination of coverage to enrollees and qualified employers[60]	A QHP issuer must provide termination of coverage notices to enrollees and qualified employers. (1) If an enrollee's coverage in a QHP is terminated by the issuer for any reason, the QHP issuer must provide the enrollee with a notice of termination of coverage that includes the reason for termination at least 30 days, prior to the last day of coverage, and consistent with the effective date established by VHC. (2) The QHP issuer must notify VHC of the termination effective date and reason for termination. (3) If a QHP issuer elects not to seek recertification with VHC for itself or for one of its QHPs, the QHP issuer must provide written notice to each enrollee.
(d) Termination of coverage effective dates[61]	In the case of a termination where the enrollee is no longer eligible, the last day of coverage is the last day of the month following the month in which notice of termination is sent, unless the individual requests an earlier termination effective date and provides reasonable notice.
(e) Employer withdrawal and termination[62]	(1) If a qualified employer chooses to withdraw from participation in VHC, the employer should notify VHC which will notify the QHP issuer. (2) The QHP issuer must terminate coverage for all enrollees of the withdrawing qualified employer.
(f) Non-renewal of QHPs.[63]	If a QHP issuer elects not to seek recertification with VHC, the QHP issuer, at a minimum, must (1) Notify VHC of its decision prior to the beginning of the recertification process; (2) Fulfill its obligation to cover benefits for each enrollee through the end of the plan or benefit year; (3) Fulfill data reporting obligations from the last plan or benefit year of the certification; and

[59] 45 CFR §156.270(c).

[60] 45 CFR §155.430(a), 45 CFR §156.285(d), §156.270(b) and §156.290(b).

[61] 45 CFR §156.285(d), §156.270(i) and §155.430(d)(3).

[62] 45 CFR §156.285(d).

[63] 45 CFR § 156.290.

	(4) Provide notice to enrollees at least 90 days in advance of the last day of coverage.
(g) Decertification[64]	If a QHP is decertified by VHC, the QHP issuer must terminate coverage for enrollees only after: (1) VHC has made notification as described in 45 CFR § 155.1080; and (2) Enrollees have an opportunity to enroll in other coverage.
48.00 Termination of participation by VHC (10/01/2013, 13-12F)	
(a) Termination for non-payment[65]	VHC must terminate participation on VHC of qualified employers that do not pay premiums as billed in accordance with the provisions of § 50.00(a).
49.00 Employer appeals[66] (10/01/2013, 13-12F)	
49.01 Employer eligibility appeals[67] (10/01/2013, 13-12F)	
(a) Employer right to appeal	An employer may appeal: (1) A notice of denial of eligibility; or (2) A failure of the VHC to make an eligibility determination in a timely manner.
(b) Notices	Notices of the right to appeal a denial of eligibility must be written and include— (1) The reason for the denial of eligibility, including a citation to the applicable regulations; and (2) The procedure by which the employer may request an appeal of the denial of eligibility.
(c) Appeal request	VHC must: (1) Allow an employer to request an appeal within 90 days from the date of the notice of denial of eligibility. (2) Accept appeal requests submitted— (i) By telephone; (ii) By mail; or (iii) Via the Internet.

[64] 45 CFR § 156.290(c).

[65] 45 CFR § 155.720(d)(2).

[66] Proposed rule, 78 FR 4722, January 22, 2013.

[67] Proposed rule, 45 CFR § 155.740, 78 FR 4723-4724, January 22, 2013.

	(3) Not limit or interfere with the applicant's right to make an appeal request; and (4) Consider an appeal request valid if it is submitted within 90 days from the date of the notice of denial of eligibility.
(d) Notice of appeal request	Upon receipt of a valid appeal request, the appeals entity must— (1) Send timely acknowledgement to the employer of the receipt of the appeal request, including— (i) An explanation of the appeals process; and (ii) Instructions for submitting additional evidence for consideration by the appeals entity. (2) Promptly notify VHC of the appeal, if the appeal request was not initially made to VHC. (3) Upon receipt of an appeal request that is not valid because it fails to meet the requirements of this section, the appeals entity must— (i) Promptly and without undue delay, send written notice to the employer that is appealing that the appeal request has not been accepted and of the nature of the defect in the appeal request; and (ii) Treat as valid an amended appeal request that meets the requirements of this section.
(e) Transmittal and receipt of records	(1) Upon receipt of a valid appeal request VHC must promptly transmit, via secure electronic interface, to the appeals entity— (i) The appeal request, if the appeal request was initially made to VHC; and (ii) The eligibility record of the employer that is appealing. (2) The appeals entity must promptly confirm receipt to VHC of the records VHC transmitted.
(f) Dismissal of appeal	The appeals entity: (1) Must dismiss an appeal if the employer that is appealing— (i) Withdraws the request in writing; or (ii) Fails to submit an appeal request 90 days from the date of the notice of denial of eligibility to the appeals entity. (2) Must provide timely notice to the employer that is appealing of the dismissal of the appeal request, including the reason for dismissal, and must notify VHC of the dismissal. (3) May vacate a dismissal if the employer makes a written request within 30 days of the date of the notice of dismissal showing good cause why the dismissal should be vacated.
(g) Procedural rights	The appeals entity must provide the employer, or the employer and employee if an employee is

of the employer	appealing, the opportunity to submit relevant evidence for review of the eligibility determination.
(h) Adjudication of VHC appeals	VHC appeals must— (1) Be reviewed *de novo* by one or more impartial officials who have not been directly involved in the employee eligibility determination implicated in the appeal, and (2) Consider the information used to determine the employer or employee's eligibility as well as any additional relevant evidence submitted during the course of the appeal by the employer or employee.
(i) Appeal decisions	Appeal decisions must: (1) Be based solely on (i) The evidence referenced in (h)(2) of this section, and (ii) The employer and employee eligibility requirements for VHC. (2) State the decision, including a plain language description of the effect of the decision on the appellant's eligibility; (3) Summarize the facts relevant to the appeal; (4) Identify the legal basis, including the regulations that support the decision; (5) State the effective date of the decision; and (6) Be effective retroactive to the date the incorrect eligibility determination was made, if the decision finds the employer eligible, or effective as of the date of the notice of the appeal decision, if eligibility is denied.
(j) Notice of appeal decision	The appeals entity must issue written notice of the appeal decision to the employer or to the employer and employee if an employee's eligibility is implicated, and to VHC within 90 days of the date the appeal request is received.
(k) Implementation of VHC appeal decisions	VHC must promptly implement the appeal decision upon receiving the notice of appeal decision under (j) of this section.
(l) Appeals record	(1) Subject to the requirements of all applicable federal and state laws regarding privacy, confidentiality, disclosure, and personally identifiable information the appeal record must be accessible to the employer, or employer and employee if an employee's eligibility is implicated, in a convenient format and at a convenient time. (2) The appeals entity must provide public access to all appeal records, subject to all applicable federal and state laws regarding privacy, confidentiality, disclosure, and personally identifiable information.

49.02 Employer appeals of employee eligibility for APTC/CSR[68] (10/01/2013, 13-12F)

[68] 45 CFR § 155.555, (NPRM, 78 FR 4594, January 22, 2013); 45 CFR § 155.310(h).

(a) Generally	An employer may, in response to a notice of an employee's eligibility for advance payments of the premium tax credit and cost-sharing reductions to an employer, appeal a determination that the employer does not provide minimum essential coverage through an employer sponsored plan or that the employer does provide that coverage but it is not affordable coverage with respect to an employee.
(b) Appeal request	VHC and the appeals entity, as applicable, must— (1) Allow an employer to request an appeal within 90 days from the date the notice of an employee's eligibility for advance payments of the premium tax credit and cost-sharing reductions to an employer is sent; (2) Allow an employer to submit relevant evidence to support the appeal; (3) Allow an employer to submit an appeal request to VHC or the appeals entity. (4) Accept appeal requests submitted— (i) By telephone; (ii) By mail; or (iii) In person. (5) Consider an appeal request valid if it is submitted in accordance with paragraph (b)(1) of this section. and with the purpose of appealing the determination identified in the notice described in 45 CFR § 155.310(h).
(c) Notice of appeal request.	Upon receipt of a valid appeal request, the appeals entity must— (1) Send timely acknowledgement of the receipt of the appeal request to the employer, including an explanation of the appeals process; (2) Send timely notice to the employee of the receipt of the appeal request, including— (i) An explanation of the appeals process; (ii) Instructions for submitting additional evidence for consideration by the appeals entity; and (iii) An explanation of the potential effect of the employer's appeal on the employee's eligibility. (3) Promptly notify VHC of the appeal, if the employer did not initially make the appeal request to VHC. (4) Upon receipt of an appeal request that is not valid because it fails to meet the requirements of this section, the appeals entity must— (i) Promptly and without undue delay, send written notice to the employer that the appeal request has not been accepted and of the nature of the defect in the appeal request; and (ii) Treat as valid an amended appeal request that meets the requirements of this

	section, including standards for timeliness.
(d) Transmittal and receipt of records.	(1) Upon receipt of a valid appeal request under this section, or upon receipt of the notice under paragraph (c)(3) of this section, VHC must promptly transmit via secure electronic interface to the appeals entity — (i) The appeal request, if the appeal request was initially made to VHC; and (ii) The employee's eligibility record. (2) The appeals entity must promptly confirm receipt of records transmitted pursuant to paragraph (d)(1) of this section to VHC.
(e) Dismissal of appeal.	The appeals entity— (1) Must dismiss an appeal if the appellant withdraws the appeal request in writing, or if the request fails to comply with the standards in paragraph (b)(4) of this section. (2) Must provide timely notice of the dismissal to the employer, employee, and VHC including the reason for dismissal; and (3) May vacate a dismissal if the employer makes a written request within 30 days of the date of the notice of dismissal showing good cause why the dismissal should be vacated.
(f) Procedural rights of the employer.	The appeals entity must provide the employer the opportunity to— (1) Provide relevant evidence for review of the determination of an employee's eligibility for advance payments of the premium tax credit or cost-sharing reductions; (2) Review— (i) The information described in 45 CFR § 155.310(h)(1); (ii) Information regarding whether the employee's income is above or below the threshold by which the affordability of employer-sponsored minimum essential coverage is measured, as set forth by standards described in 26 CFR § 1.36B; and (iii) Other data used to make the determination described in 45 CFR § 155.305(f) or (g), to the extent allowable by law, except the information described in paragraph (g) of this section.
(g) Confidentiality of employee information.	Neither VHC nor the appeals entity may make available to an employer any tax return information of an employee as prohibited by § 6103 of the Code.
(h) Adjudication of employer appeals.	Employer appeals must— (1) Be reviewed by one or more impartial officials who have not been directly involved in the employee eligibility determination implicated in the appeal; (2) Consider the information used to determine the employee's eligibility as well as any additional relevant evidence provided by the employer or the employee during the course of the appeal; and

	(3) Be reviewed *de novo*.
(i) Appeal decisions.	Employer appeal decisions must— (1) Be based exclusively on the information and evidence described in paragraph (h)(2) and the eligibility standards in 45 CFR part 155, subpart D; (2) State the decision, including a plain language description of the effect of the decision on the employee's eligibility; (3) Summarize the facts relevant to the appeal; (4) Identify the legal basis, including the regulations that support the decision; and (5) State the effective date of the decision.
(j) Notice of appeal decision.	The appeals entity must provide written notice of the appeal decision within 90 days of the date the appeal request is received, as administratively feasible, to— (1) The employer. Such notice must include— (i) The appeal decision; and (ii) An explanation that the appeal decision does not foreclose any appeal rights the employer may have under subtitle F of the Code. (2) The employee. Such notice must include the appeal decision. (3) VHC.
(k) Implementation of the appeal decision	After receipt of the notice of the appeal decision, if the appeal decision affects the employee's eligibility, VHC must promptly redetermine the employee's eligibility in accordance with the standards specified in 45 CFR § 155.305.
(l) Appeal record.	Subject to the requirements of 45 CFR § 155.550 and paragraph (g) of this section, the appeal record must be accessible to the employer and to the employee in a convenient format and at a convenient time.
50.00 Premium processing (10/01/2013, 13-12F)	
(a) Premium aggregation	VHC must perform the following functions related to premium payment administration: (1) Provide each qualified employer with a bill on a monthly basis that identifies the employer contribution, the employee contribution, and the total amount that is due to the QHP issuers from the qualified employer; (2) Collect from each employer the total amount due and make payments to QHP issuers for all enrollees; and (3) Maintain books, records, documents, and other evidence of accounting procedures and practices of the premium aggregation program for each benefit year for at least 10 years.
(b) QHP issuers must	QHP Issuer must accept payment from the VHC on behalf of a qualified employer or an

accept VHC payments	enrollee.

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Part Seven
Eligibility-and-Enrollment Procedures

51.00 Automatic entitlement to Medicaid following a determination of eligibility under other programs[1] (10/01/2013, 13-12F)

	A separate application for Medicaid is not required from an individual who receives SSI or AABD.

52.00 Application[2] (10/01/2013, 13-12F)

52.01 In general (10/01/2013, 13-12F)

	An individual will be afforded the opportunity to apply for health benefits at any time, without delay.[3]

52.02 Single, streamlined application[4] (10/01/2013, 13-12F)

(a) The application	A single, streamlined application will be used to determine eligibility and to collect information necessary for: (1) Enrollment in a QHP; (2) APTC; (3) CSR; and (4) Medicaid.
(b) Filing the single streamlined application	AHS will: (1) Accept the single, streamlined application from an application filer; and (2) Provide the tools to file an application: (i) Via an internet website; (ii) By telephone through a call center; (iii) By mail;

[1] 42 CFR § 435.909.

[2] 42 CFR § 435.907; 45 CFR §§ 155.310(a) and 155.405.

[3] 42 CFR § 435.906; 45 CFR § 155.310(c).

[4] 42 CFR § 435.907; 45 CFR § 155.405.

	(iv) Through other commonly available electronic means; and (v) In person.
(c) Assistance[5]	AHS will provide assistance to any individual seeking help with the application or renewal process, in the manner prescribed in § 5.01.
(d) Application filers	An application will be accepted from: (1) The applicant; (2) An adult who is in the applicant's household; (3) An authorized representative; or (4) If the applicant is a minor or incapacitated, someone acting responsibly for the applicant.
(e) Missing information[6]	(1) The applicant's eligibility for health benefits will not be determined before the applicant provides answers to all required questions on the application. (2) If an incomplete application is received, the applicant will be sent a request for answers to all of the unanswered questions necessary to determine eligibility. The request will include a response due date, which will be no earlier than 15 days after the date the request is sent to the applicant. (3) If a full response to the request is received on or before the request due date, the eligibility process will be activated for determining: (i) Coverage, based on the date the application was originally received; or (ii) The need to request any corroborative information necessary to determine eligibility. (4) If responses to all unanswered questions necessary for determining eligibility are not received by the response due date, the applicant will be notified that AHS is unable to determine their eligibility for health benefits. The date that the incomplete application was received will not be used in any subsequent eligibility determinations.
(f) Limits on information[7]	An applicant will be required to provide only the information necessary to make an eligibility determination or for a purpose directly connected to the

[5] 42 CFR § 435.908.

[6] 45 CFR § 155.310(k) (NPRM, 78 FR 37031)

[7] 42 CFR § 435.907(e).

	administration of health-benefits programs.
(g) Information collection from non-applicants[8]	Information regarding citizenship, status as a national, or immigration status will not be requested for an individual who is not seeking health benefits for themselves.
(h) Signature required	An initial application must be signed under penalty of perjury. Electronic-including telephonically-recorded-signatures and handwritten signatures transmitted via any other electronic transmission will be accepted.
(i) Accessibility	Any application or supplemental form must be accessible to individuals who are limited English proficient and individuals who have disabilities, consistent with the provisions of § 5.01.
53.00 Attestation and verification – in general (10/01/2013, 13-12F)	
(a) Basis and scope	The income and eligibility verification requirements set forth in §§ 53.00 through 56.00 are based on §§ 1137, 1902(a)(4), 1902(a)(19), 1902(a)(46)(B), 1902(ee), 1903(r)(3), 1903(x), and 1943(b)(3) of the Act, and § 1413 of the ACA.
(b) In general	AHS will verify or obtain information as provided in §§ 53.00 through 56.00 before making a determination about an individual's eligibility for health benefits. Such information will be used in making the eligibility determination. See § 58.00 for details on the eligibility determination process.
(c) Attestation[9]	Except where the law requires other procedures (such as for citizenship and immigration-status information), attestation of information needed to determine the eligibility of an individual for health benefits will be accepted (either self-attestation by the individual or attestation by an adult who is in the individual's household, an authorized representative, or, if the individual is under age 18[10] or incapacitated, someone acting responsibly for the individual) without requiring further information (including documentation) from the individual.
(d) Use of federal electronic verification service[11]	To the extent that information related to determining eligibility for health benefits is available through an electronic service established by HHS, AHS will obtain the information through such service, unless AHS has secured HHS approval of alternative procedures described in (e) below.[12]

[8] 45 CFR § 155.310(a)(2).

[9] 42 CFR § 435.945(a).

[10] In its response to comments on its proposed rule, CMS indicated that "[s]tate law and regulation establish who may file an application for an insurance affordability program on behalf of a child under age 21, and nothing in the Affordable Care Act or these regulations alters State authority or flexibility on this matter." 77 FR 17,156 (March 23, 2012). In Vermont, the age of majority is 18. 1 VSA § 173.

[11] 42 CFR § 435.949(b).

[12] 42 CFR § 435.945(k); 45 CFR § 155.315(h)

(e) Flexibility in information collection and verification	Subject to approval by HHS, AHS may request and use information from a source or sources alternative to those listed in § 56.01(b), or through a mechanism other than the electronic service described in (d) above, provided that such alternative source or mechanism will reduce the administrative costs and burdens on individuals and the state while maximizing accuracy, minimizing delay, and meeting applicable requirements relating to confidentiality, disclosure, maintenance, or use of information.
(f) Notice of intent to obtain and use information[13]	Before it requests information for an individual from another agency or program, AHS will inform the individual that it will obtain and use information available to it to verify income, resources (when applicable), and eligibility or for other purposes directly connected to the administration of a health-benefits program.
(g) Security of electronic information exchanges[14]	Information exchanged electronically between AHS and any other agency or program will be sent and received via secure electronic interfaces, as specified in § 4.09. Any such exchange of data will be made pursuant to written agreements with such other agencies or programs, which will provide for appropriate safeguards limiting the use and disclosure of information as required by federal or state law or regulations.
(h) Limitation on scope of information requests	(1) An individual will not be required to provide information beyond the minimum necessary to support eligibility and enrollment processes. (2) An individual will not be required to provide additional information or documentation unless information needed by AHS cannot be obtained electronically or the information obtained electronically is not reasonably compatible, as provided in § 57.00, with information provided by or on behalf of the individual.
(i) Limitation on use of evidence of immigration status	Evidence of immigration status may not be used to determine that an individual is not a Vermont resident.

54.00 Attestation and verification of citizenship and immigration status (10/01/2013, 13-12F)

54.01 Definition (10/01/2013, 13-12F)

Citizenship[15]	For the purposes of this section, the term "citizenship" includes status as a "national of the United States," as defined by § 101(a)(22) of INA (8 USC § 1101(a)(22)), to include both citizens of the United States and non-citizen nationals of the United States.

[13] 42 CFR § 435.945(f).

[14] 42 CFR § 435.945(i).

[15] 42 CFR § 435.407.

54.02 Declaration of citizenship or immigration status (10/01/2013, 13-12F)	
	Except as provided in § 54.06, an individual seeking health benefits must sign a declaration that they are: (a) A citizen or national of the United States (§ 17.01(a) and (c); (b) A qualified non-citizen (§ 17.01(d); or (c) Lawfully present in the United States (§ 17.01(g).
54.03 Verification frequency (10/01/2013, 13-12F)	
(a) Citizenship[16]	Verification or documentation of citizenship is a one-time activity; once an individual's citizenship is documented and recorded, subsequent changes in eligibility should not require repeating the documentation unless later evidence raises a question about the individual's citizenship.
(b) Immigration status[17]	Immigration status, including lawful presence, must be verified or documented at the time of initial application and at the time of eligibility renewal. In verifying immigration status at the time of renewal, AHS will first rely on information provided at the time of initial application to determine ongoing eligibility. AHS will only require the individual to provide further documentation or to re-verify satisfactory status if it cannot verify continued eligibility based on the information already available to it.
54.04 Electronic verification[18] (10/01/2013, 13-12F)	
(a) Verification with records from the SSA	For an individual who attests to citizenship and has a Social Security number, AHS will transmit their Social Security number and other identifying information to HHS, which will submit it to the SSA for verification.
(b) Verification with the records of DHS	For an individual who has documentation that can be verified through DHS and who either attests to lawful immigration status or lawful presence, or who attests to citizenship and for whom AHS cannot substantiate a claim of citizenship through SSA, AHS will transmit information from the individual's documentation and other identifying information to HHS, which will submit necessary information to DHS for verification.
54.05 Inconsistencies and inability to verify information[19] (10/01/2013, 13-12F)	

[16] 42 CFR § 435.407(i)(5).

[17] CMS SHO Letter No. 10-006 (July 1, 2010), p. 5.

[18] 42 CFR § 435.956 (NPRM, 78 FR 4593); 45 CFR § 155.315(c).

[19] 42 CFR § 435.956 (NPRM, 78 FR 4593); 45 CFR 155.315(c)(3).

(a) In general	Except as provided in § 54.06, for an individual who attests to citizenship or eligible immigration status, and for whom such attestation cannot be verified through SSA or DHS, AHS will: (1) Follow the procedures specified in § 57.00 (inconsistencies), except that: (i) The individual will be provided with a period of 90 days from the date on which the notice described in § 57.00(c)(2) is received for the individual to provide satisfactory documentary evidence or resolve the inconsistency with the SSA or DHS, as applicable. The date on which the notice is received is considered to be five days after the date on the notice, unless the individual demonstrates that they did not receive the notice within the five-day period. (ii) The reasonable opportunity period may be extended beyond 90 days if the individual is making a good-faith effort to resolve any inconsistencies or obtain any necessary documentation or AHS needs more time to complete the verification process. (2) For purposes of Medicaid: (i) Assist the individual in obtaining a Social Security number;[20] (ii) Attempt to resolve any inconsistencies, including typographical or other clerical errors, between information provided by the individual and data from an electronic data source, and resubmit corrected information to the electronic data source; (iii) Provide the individual with information on how to contact the source of the electronic data so they can attempt to resolve inconsistencies directly with such data source; and (iv) Permit the individual to provide other documentation of citizenship or immigration status.[21]
(b) Eligibility activities during reasonable opportunity period[22]	During the reasonable opportunity period described in (a)(1)(i) and (ii) of this § 54.05, AHS will: (1) Not delay, deny, reduce, or terminate benefits for an individual who is otherwise eligible for health benefits. (2) Begin to furnish Medicaid benefits to otherwise eligible individuals

[20] 42 CFR § 435.910.

[21] 42 CFR §§ 435.956(g)(1)(iv), 435.406 and 435.407.

[22] 42 CFR § 435.956(g); 45 CFR § 155.315(f)(4).

	during the reasonable opportunity period effective on the date of the application containing the declaration of citizenship or immigration status by or on behalf of the individual. (3) If relevant, proceed with respect to QHP enrollment, APTC, and CSR, as provided for in § 57.00(c)(4).[23]
(c) Failure to complete verification during reasonable opportunity period	If, by the end of the reasonable opportunity period described in (a)(1)(i) and (ii) of this § 54.05, the individual's citizenship or immigration status has not been verified in accordance with paragraph (a) of this subsection, AHS will: (1) With regard to the individual's eligibility for Medicaid, take action within 30 days to terminate eligibility.[24] (2) With regard to the individual's eligibility for enrollment in a QHP, APTC and CSR, proceed in accordance with the provisions of § 57.00(c)(5) or (6) depending on AHS's ability to determine the individual's ineligibility for Medicaid.[25]
(d) Records of verification	AHS will maintain a record of having verified citizenship or immigration status for each individual in a case record or electronic database.
54.06 Individuals not required to document citizenship or national status[26] (10/01/2013, 13-12F)	
	The following individuals are not required to document citizenship or national status as a condition of receipt of Medicaid benefits: (a) An individual receiving SSI benefits under Title XVI of the Act; (b) An individual entitled to or enrolled in any part of Medicare; (c) An individual receiving Social Security disability insurance benefits under § 223 of the Act or monthly benefits under § 202 of the Act, based on the individual's disability (as defined in § 223(d) of the Act); (d) An individual who is in foster care and who is assisted under Title IV-B of the Act, and an individual who is a recipient of foster-care maintenance or adoption assistance payments under Title IV-E of the Act; and (e) A child born in the United States on or after April 1, 2009, who was deemed eligible for Medicaid as a newborn (§ 9.03(b)).[27]

[23] 45 CFR § 155.315(c)(3).

[24] 42 CFR § 435.956(g)(4) (NPRM, 78 FR 4593).

[25] 45 CFR § 155.315(f)(5).

[26] 42 CFR § 435.406(a)(1)(v).

[27] Section 1903(x) of the Act.

54.07 Documentary evidence of citizenship and identity (10/01/2013, 13-12F)	
(a) Definition: available	Document exists and can be obtained within the period of time specified in § 54.05.
(b) Standalone evidence of citizenship[28]	The following will be accepted as satisfactory documentary evidence of citizenship: (1) A U.S. passport, including a U.S. Passport Card issued by the Department of State, without regard to any expiration date as long as such passport or Card was issued without limitation. (2) A Certificate of Naturalization. (3) A Certificate of U.S. Citizenship. (4) A valid state-issued driver's license if the state issuing the license requires proof of U.S. citizenship, or obtains and verifies a Social Security number from the applicant who is a citizen before issuing such license.[29] (5) Tribal documents: (i) Documentary evidence issued by a federally-recognized Indian tribe, as published in the Federal Register by the Bureau of Indian Affairs within the U.S. Department of the Interior, and including tribes located in a State that has an international border, which: (A) Identifies the federally-recognized Indian tribe that issued the document; (B) Identifies the individual by name; and (C) Confirms the individual's membership, enrollment, or affiliation with the tribe. (ii) Documents described in paragraph (b)(5)(i) of this subsection include, but are not limited to: (iii) A tribal enrollment card; (iv) A Certificate of Degree of Indian Blood; (v) A tribal census document; (vi) Documents on tribal letterhead, issued under the signature of the appropriate tribal official, that meet the requirements of paragraph

[28] 42 CFR § 435.407(a) (NPRM, 78 FR 4593).

[29] [Reserved]

	(b)(5)(i) of this subsection.
(c) Other evidence of citizenship[30]	If an applicant does not provide documentary evidence from the list in paragraph (b) of this subsection, the following must be accepted as satisfactory evidence to establish citizenship if also accompanied by an identity document listed in paragraph (d) of this subsection: (1) A U.S. public birth certificate showing birth in one of the 50 States, the District of Columbia, Puerto Rico (if born on or after January 13, 1941), Guam, the Virgin Islands of the U.S. (on or after January 17, 1917), American Samoa, Swain's Island, or the Commonwealth of the Northern Mariana Islands (CNMI) (after November 4, 1986 (CNMI local time)). The birth record document may be issued by the State, Commonwealth, Territory, or local jurisdiction. If the document shows the individual was born in Puerto Rico, the Virgin Islands of the U.S., or the CNMI before these areas became part of the U.S., the individual may be a collectively naturalized citizen. (2) At state option, a cross-match with a state vital statistics agency documenting a record of birth. (3) A Certification of Report of Birth, issued to U.S. citizens who were born outside the U.S. (4) A Report of Birth Abroad of a U.S. Citizen. (5) A Certification of birth. (6) A U.S. Citizen I.D. card. (7) A Northern Marianas Identification Card, issued to a collectively naturalized citizen, who was born in the CNMI before November 4, 1986. (8) A final adoption decree showing the child's name and U.S. place of birth, or if an adoption is not final, a statement from a state-approved adoption agency that shows the child's name and U.S. place of birth. (9) Evidence of U.S. Civil Service employment before June 1, 1976. (10) U.S. Military Record showing a U.S. place of birth. (11) A data match with the Systematic Alien Verification for Entitlements (SAVE) Program or any other process established by DHS to verify that an individual is a citizen. (12) Documentation that a child meets the requirements of § 101 of the Child Citizenship Act of 2000 (8 USC § 1431). (13) Medical records, including, but not limited to, hospital, clinic, or doctor records or admission papers from a nursing facility, skilled care facility,

[30] 42 CFR § 435.407(b) (NPRM, 78 FR 4593).

	or other institution that indicate a U.S. place of birth. (14) Life, health, or other insurance record that indicates a U.S. place of birth. (15) Official religious record recorded in the U.S. showing that the birth occurred in the U.S. (16) School records, including pre-school, Head Start and daycare, showing the child's name and U.S. place of birth. (17) Federal or State census record showing U.S. citizenship or a U.S. place of birth. (18) If the individual does not have one of the documents listed in paragraphs (b) or (c)(1) through (17) of this subsection, they may submit an affidavit signed by another individual under penalty of perjury who can reasonably attest to the individual's citizenship, and that contains the individual's name, date of birth, and place of U.S. birth. The affidavit does not have to be notarized.
(d) Evidence of identity[31]	(1) The following will be accepted as proof of identity, provided such document has a photograph or other identifying information including, but not limited to, name, age, sex, race, height, weight, eye color, or address: (i) Identity documents listed at 8 CFR § 274a.2(b)(1)(v)(B)(1), except a driver's license issued by a Canadian government authority. (ii) Driver's license issued by a State or Territory. (iii) School identification card. (iv) U.S. military card or draft record. (v) Identification card issued by the federal, state, or local government. (vi) Military dependent's identification card. (vii) U.S. Coast Guard Merchant Mariner card. (2) For children under age 19, a clinic, doctor, hospital, or school record, including preschool or day care records. (3) Two documents containing consistent information that corroborates an individual's identity. Such documents include, but are not limited to, employer identification cards, high school and college diplomas (including high school equivalency diplomas), marriage certificates, divorce decrees, and property deeds or titles.

[31] 42 CFR § 435.407(c) (NPRM, 78 FR 4593).

	(4) AHS will accept as proof of identity: (i) A finding of identity from a federal agency or another state agency, including but not limited to a public assistance, law enforcement, internal revenue or tax bureau, or corrections agency, if the agency has verified and certified the identity of the individual. (ii) [Reserved] (5) If the individual does not have any document specified in paragraphs (d)(1) through (d)(3) of this subsection and identity is not verified under paragraph (d)(4) of this subsection, the individual may submit an affidavit signed, under penalty of perjury, by another person who can reasonably attest to the individual's identity. Such affidavit must contain the individual's name and other identifying information establishing identity, as describe in paragraph (d)(1) of this subsection. The affidavit does not have to be notarized.
(e) Verification of citizenship by a federal agency or another state[32]	AHS may rely, without further documentation of citizenship or identity, on a verification of citizenship made by a federal or state agency, if such verification was done on or after July 1, 2006.
(f) Assistance[33]	AHS will assist individuals who need assistance to secure satisfactory documentary evidence of citizenship in a timely manner.
(g) Documentary evidence[34]	A photocopy, facsimile, scanned, or other copy of a document will be accepted to the same extent as an original document under this subsection, unless information on the submitted document is inconsistent with other information available to AHS, or AHS otherwise has reason to question the validity of the document or the information on the document.
54.08 Documentation of immigration status (10/01/2013, 13-12F)	
	A non-citizen individual seeking health benefits must provide United States Citizenship and Immigration Services (USCIS) documents to establish immigration status, as specified below:
(a) Lawful Permanent Resident	(1) USCIS Form I-551; or (2) For recent arrivals, a temporary I-551 stamp on a foreign passport or on Form I-94. (3) Note: Forms I-151, AR-3 and AR-3A have been replaced by USCIS. If presented as evidence of status, contact USCIS to verify status by filing a G-845 with a copy of the old form. Refer the individual to USCIS to

[32] 42 CFR § 435.407(d) (NPRM, 78 FR 4593).

[33] 42 CFR § 435.407(e) (NPRM, 78 FR 4593).

[34] 42 CFR § 435.407(f) (NPRM, 78 FR 4593).

	apply for a replacement card.
(b) Refugee	(1) The following documents may be used to document refugee status: (i) USCIS Form I-94 endorsed to show entry as refugee under § 207 of INA and date of entry to the United States; (ii) USCIS Form I-688B annotated "274a.12(a)(3)"; (iii) Form I-766 annotated "A3"; or (iv) Form I-571. (2) Refugees usually change to Lawful Permanent Resident status after 12 months in the United States, but for the purposes of health-benefits eligibility are still considered refugees. They are identified by Form I-551 with codes RE-6, RE-7, RE-8, or RE-9. (3) The following documents may be used to document that the individual is a "Cuban or Haitian entrant": (i) An I-94 Arrival/departure card with a stamp showing parole into the United States on or after April 21, 1980. I-94 may refer to §212(d)(5). I-94 may refer to humanitarian or public interest parole. I-94 may be expired. (ii) An I-94 Arrival/departure card with a stamp showing parole at any time as a "Cuban/Haitian Entrant (Status Pending)." I-94 may refer to §212(d)(5). I-94 may be expired. (iii) CH6 adjustment code on the I-551. Even after a Cuban/Haitian Entrant (Status Pending) becomes a permanent resident, they technically retain the status Cuban/Haitian Entrant (Status Pending). I-551 may be expired. (iv) A Cuban or Haitian passport with a §212(d)(5) stamp dated after October 10, 1980. Passport may be expired.
(c) Asylee	(1) USCIS Form I-94 annotated with stamp showing grant of asylum under § 208 of the INA; (2) A grant letter from the Asylum Office of the USCIS; (3) Form I-688B annotated "274a.12(a)(5)"; (4) Form I-766 annotated "A5"; or (5) An order of the Immigration Judge granting asylum. If a court order is presented, file a G-845 with the local USS district office attaching a copy of the document to verify that the order was not overturned on appeal.

(d) American Indian born outside of the United States	(1) Documentation of LPR status (See I-313.1); (2) Birth or baptismal certificate issued on a reservation; (3) Membership card or other tribal records; (4) Letter from the Canadian Department of Indian Affairs; (5) School records; or (6) Contact with the tribe in question.
(e) Non-citizen granted parole for at least one year by the USCIS	USCIS Form I-94 endorsed to show grant of parole under § 212(d)(5) of the INA and a date showing granting of parole for at least one year.
(f) Non-citizen granted conditional entry under the immigration law in effect before April 1, 1980	(1) USCIS Form I-94 with stamp showing admission under § 203(a)(7) of the INA, refugee-conditional entry; (2) Form I-688B annotated "274a.12 (a)(3)"; or (3) Form I-766 annotated "A-3."
(g) Non-citizen who has had deportation withheld under § 243(h) of the INA	(1) Order of an Immigration Judge showing deportation withheld under § 243(h) of the INA and date of the grant; (2) USCIS Form I-688B annotated "247a.12(a)(10)"; or (3) Form I-766 annotated "A10."

54.09 Documentation of entry date (10/01/2013, 13-12F)

(a) The following are the documents that may be used to determine the five-year bar (§ 17.03):

(1) Form I-94. The date of admission should be found on the refugee stamp. If missing, AHS will contact USCIS to verify the date of admission by filing a G-845 with a copy of the document;

(2) If an individual presents Forms I-688B or I-766 (Employment Authorization Documents), and I-57 (refugee travel document), AHS will ask the individual to present Form I-94. If not available, AHS will contact USCIS by filing a G-845 with a copy of the document presented; or

(3) Grant letters or court orders. AHS will derive the date status is granted from the date of the letter or court order. If missing, AHS will contact USCIS to verify date of grant by filing a G-845 with a copy of the document.

(b) If an individual presents a receipt indicating that they have applied to USCIS for a replacement document for one of the documents identified above, AHS will contact the USCIS to verify status by filing a G-845 with the

	local USCIS district office with a copy of the receipt. AHS will contact the USCIS any time there is a reason to question the authenticity of a document presented or the information on the document is insufficient to determine whether non-citizen status requirements are met.
54.10 Ineligible non-citizens and non-immigrants (10/01/2013, 13-12F)	
	Some non-citizens may be lawfully admitted but only for a temporary or specified period of time as legal non-immigrants. These non-citizens are never qualified non-citizens. Because of the temporary nature of their admission status, they generally will be unable to establish residency and are not eligible for health benefits. For example, a non-citizen in possession of a student visa is not a qualified non-citizen for Medicaid purposes. In rare instances, an ineligible non-citizen may be able to establish residency and meet all other eligibility criteria of a health-benefits program and therefore be eligible for treatment of emergency medical conditions only (§ 17.02(c)).
54.11 Visitors, tourists, and some workers and diplomats (10/01/2013, 13-12F)	
	Visitors, tourists, and some workers and diplomats are also ineligible non-citizens and non-immigrants. These non-citizens would have the following types of documentation: (a) Form I-94 Arrival-Departure Record; (b) Form I-185 Canadian Border Crossing Card; (c) Form I-186 Mexican Border Crossing Card; (d) Form SW-434 Mexican Border Visitor's Permit; or (e) Form I-95A Crewman's Landing Permit.
55.00 Attestation and verification of other nonfinancial information[35] (10/01/2013, 13-12F)	
55.01 Attestation only (10/01/2013, 13-12F)	
	Unless information from an individual is not reasonably compatible with other information provided or otherwise available to AHS, as described in § 57.00(b)(3), attestation of information needed to determine the following eligibility requirements will be accepted without requiring further information from the individual: (a) Residency; (b) Age;

[35] 42 CFR § 435.956; 45 CFR §§ 155.315 and 155.320.

	(c) Date of birth; and (d) Pregnancy.
55.02 Verification of attestation (10/01/2013, 13-12F)	
	An individual's attestations of information needed to determine the following eligibility requirements will be verified by AHS:
(a) Social Security number[36]	(1) The Social Security number furnished by an individual will be verified with SSA to insure the Social Security number was issued to that individual, and to determine whether any other Social Security numbers were issued to that individual. (2) For any individual who provides a Social Security number, AHS will transmit the number and other identifying information to HHS, which will submit it to SSA. (3) To the extent that an individual's Social Security number is not able to be verified through the SSA, or the SSA indicates that the individual is deceased, the procedures set forth in § 57.00 will be followed, except that the individual will be provided with a period of 90 days from the date on which the notice described in § 57.00(c)(2)(ii) is received for the individual to provide satisfactory documentary evidence or resolve the inconsistency with the SSA. (4) The date on which the notice is received means five days after the date on the notice, unless the individual demonstrates that they did not receive the notice within the five-day period.
(b) Incarceration status[37]	When determining eligibility for enrollment in a QHP, an individual's attestation regarding incarceration status will be verified by: (1) Relying on any electronic data sources that are available to AHS; or (2) If an approved data source is unavailable, accepting attestation as provided in § 55.01.
(c) Eligibility for MEC other than through an eligible employer-sponsored plan[38]	(1) When determining eligibility for APTC and CSR, AHS will verify whether an individual is eligible for MEC other than through an eligible employer-sponsored plan or Medicaid, using information obtained by transmitting identifying information specified by HHS to HHS. (2) When determining eligibility for APTC and CSR, AHS will also verify whether an individual already has been determined eligible for coverage

[36] 42 CFR §§ 435.910 (NPRM, 78 FR 4593) and 435.956(d); 45 CFR § 155.315(b).

[37] 45 CFR § 155.315(e).

[38] 45 CFR § 155.320(b).

	through Medicaid within the state.
(d) Enrollment in an eligible employer-sponsored plan and eligibility for qualifying coverage in an eligible employer-sponsored plan[39]	
(1) General requirement	When determining eligibility for APTC and CSR, AHS will verify whether an individual reasonably expects to be enrolled in an eligible employer-sponsored plan or is eligible for qualifying coverage in an eligible employer-sponsored plan for the benefit year for which coverage is requested.
(2) Data	AHS will: (i) Obtain data about enrollment in and eligibility for an eligible employer-sponsored plan from any electronic data sources that are available to it and which have been approved by HHS, based on evidence showing that such data sources are sufficiently current, accurate, and minimize administrative burden. (ii) Obtain any available data regarding enrollment in employer-sponsored coverage or eligibility for qualifying coverage in an eligible employer-sponsored plan based on federal employment by transmitting identifying information specified by HHS to HHS. (iii) Utilize data regarding small-group enrollment in QHPs. (iv) Obtain any available data regarding the employment of an individual and the members of their household, from any electronic data sources that are available to AHS and have been approved by HHS for this purpose, based on evidence showing that such data sources are sufficiently current, accurate, and minimize administrative burden.
(3) Verification procedures	(i) Except as specified in paragraphs (d)(3)(ii) or (iii) of this subsection, an individual's attestation regarding the verification specified in paragraph (d)(1) will be accepted without further verification. (ii) If an individual's attestation is not reasonably compatible with the information specified in paragraphs (d)(2)(i) through (d)(2)(iii) of this subsection, other information provided by the individual or by the application filer on the individual's behalf, or other information in AHS's records, the procedures specified in § 57.00 will be followed. (iii) If AHS does not have any of the information specified in paragraphs (d)(2)(i) through (d)(2)(iii) of this subsection for an individual, and

[39] 45 CFR § 155.320(d) (NPRM, 78 FR 4593).

	either does not have the information specified in paragraph (d)(2)(iv) for the individual or the individual's attestation is not reasonably compatible with the information specified in (d)(2)(iv), AHS will select a statistically significant random sample of all such individuals and: (A) Provide notice to the selected individuals indicating that AHS will be contacting any employer identified on the application for the individual and the members of their household to verify whether the individual is enrolled in an eligible employer-sponsored plan or is eligible for qualifying coverage in an eligible employer-sponsored plan for the benefit year for which coverage is requested; (B) Proceed with all other elements of eligibility determination using the individual's attestation, and provide eligibility for enrollment in a QHP to the extent that an individual is otherwise qualified; (C) Ensure that APTC and CSR are provided on behalf of an individual who is otherwise qualified for such payments and reductions, if the tax filer for the individual attests that they understand that any APTC paid on their behalf is subject to reconciliation; (D) Make reasonable attempts to contact any employer identified on the application for the individual and the members of their household, to verify whether the individual is enrolled in an eligible employer-sponsored plan or is eligible for qualifying coverage in an eligible employer-sponsored plan for the benefit year for which coverage is requested; (E) If any information is received from an employer relevant to the individual's enrollment in an eligible employer-sponsored plan or eligibility for qualifying coverage in an eligible employer-sponsored plan, the individual's eligibility will be determined based on such information and in accordance with the effective dates specified in § 74.04, and if such information changes their eligibility determination, notify the individual and their employer or employers of such determination; (F) If, after a period of 90 days from the date on which the notice described in paragraph (d)(3)(iii)(A) of this subsection is sent to the individual, the necessary information from an employer is not able to be obtained, the individual's eligibility will be determined based on their attestation regarding that employer. (G) In order to carry out the process described in paragraph (d)(3)(iii) of this subsection, an individual's information will be disclosed to an employer only to the extent necessary for the employer to identify the employee.
56.00	**Attestation and verification of income and family size[40] (10/01/2013, 13-12F)**

[40] Generally, the ACA's provisions regarding modernization of Medicaid eligibility procedures (*e.g.*, application, renewal, attestation, electronic verification, submission modes, etc.) apply to determination of MAGI- and non-MAGI based eligibility decisions. See, CMS response to comments on proposed rule, 77

56.01 Data (10/01/2013, 13-12F)	
(a) Tax data[41]	(1) For all individuals whose income is counted in making a health-benefits eligibility determination, and for whom Social Security numbers are available, tax data regarding income and family size will be requested from the Secretary of the Treasury and data regarding Social Security benefits from the Commissioner of Social Security by transmitting identifying information specified by HHS to HHS. (2) If the identifying information for one or more individuals does not match a tax record on file with the Secretary of the Treasury that may be disclosed; AHS will proceed in accordance with the provisions in § 56.02 (for Medicaid) or § 56.03 (for APTC and CSR).
(b) Non-tax data	For all individuals whose income is counted in making a health-benefits eligibility determination, non-tax data regarding income will be requested as follows: (1) To the extent that AHS determines such information is useful to verifying the financial eligibility of an individual, the following will be requested: (i) Information related to wages, net earnings from self-employment, and unearned income and resources from: (A) The State Wage Information Collection Agency (SWICA); (B) The SSA; (C) The State of Vermont's new-hire database; (D) The agency or agencies administering the state unemployment compensation laws; (E) The state-administered supplementary payment program under § 1616(a) of the Act (AABD, See AABD Rule 2700); and (F) Any state program administered under a plan approved under Titles I, X, XIV, or XVI of the Act; (ii) Information related to eligibility or enrollment from the 3SquaresVt Program, the Reach Up Program, other health-benefits programs, and other public-assistance programs that are administered by the State of Vermont; and

FR 17,143 (March 23, 2012). Accordingly, the provisions in this section apply in determining MABD income. However, as the concept of "family size" does not apply in the context of MABD (that program utilizes the concepts of "financial responsibility group" and "Medicaid group" in determining the countable non-MAGI-based income), provisions in this section that refer to "family size" apply only to MAGI-related Medicaid eligibility.

[41] 42 CFR § 435.948; 45 CFR § 155.320(c).

	(iii) Any other information source bearing upon the individual's financial eligibility. (2) To the extent that the information identified in this subsection is available through the federal electronic verification service (§ 53.00(d)), the information will be obtained through such service. (3) The information will be requested by Social Security number, or if a Social Security number is not available, using other personally-identifying information in the individual's account, if possible.
56.02 Verification process for Medicaid (10/01/2013, 13-12F)	
In determining an individual's eligibility for Medicaid:	
(a) Family size[42]	For purposes of MAGI-based Medicaid eligibility, attestation of information needed to determine family size in accordance with the procedure set forth in § 55.01 will be accepted (attestation only).
(b) Income[43]	Income will be verified by comparing the individual's attestations with tax- and non-tax data obtained pursuant to § 56.01. If the attestations are not reasonably compatible with such data or if such data is not available, AHS will proceed in accordance with the provisions in § 57.00(c).
56.03 Verification process for APTC and CSR – general procedures (10/01/2013, 13-12F)	
In determining an individual's eligibility for APTC and CSR:	
(a) Family size[44]	(1) The individual must attest to the persons that comprise a tax filer's family size. (2) To the extent that the individual attests that tax data (§ 56.01(a)) represents an accurate projection of a tax filer's family size for the benefit year for which coverage is requested, the individual's attestation will be accepted without further verification. (3) To the extent that tax data (§ 56.01(a)) is unavailable, or the individual attests that a change in circumstances has occurred or is reasonably expected to occur, and so it does not represent an accurate projection of a tax filer's family size for the benefit year for which coverage is requested, the tax filer's family size will be verified by accepting the individual's attestation without further verification, except as specified in

[42] 42 CFR § 435.956(f); 45 CFR § 155.320(c)(2)(i).

[43] 42 CFR §§ 435.945, 435.948, and 435.952; 45 CFR § 155.320(c)(2)(ii).

[44] 45 CFR § 155.320(c)(3)(i).

	paragraph (a)(4) of this subsection. (4) If the individual's attestation to family size is not reasonably compatible with other information provided by the application filer for the individual or in AHS's records, data obtained through other electronic data sources will be used to verify the attestation. If such data sources are unavailable or information in such data sources is not reasonably compatible with the individual's attestation, additional documentation will be requested to support the attestation within the procedures specified in § 57.00. (5) *Verification regarding APTC and CSR.* Verification that neither APTC nor CSR is being provided on behalf of an individual will be achieved by using information obtained by transmitting identifying information specified by HHS to HHS.[45]
(b) Basic verification process for annual household income[46]	(1) The individual must attest to the tax filer's projected annual household income. (2) Annual household income will be calculated based on tax-return data (§ 56.01(a)) (tax-based income calculation), if it is available. (3) To the extent that the individual attests that the tax-based income calculation (§ 56.03(c)(2)) represents an accurate projection of the tax filer's household income for the benefit year for which coverage is requested, the tax filer's eligibility for APTC and CSR will be determined based on that calculation.
(c) Verification process for increases in household income	(1) Except as specified in paragraphs (d)(2) or (3) of this subsection, the individual's attestation for the tax filer's household will be accepted without further verification if: (i) The individual attests that the tax filer's annual household income has increased or is reasonably expected to increase from the tax-based income calculation (§ 56.03(c)(2)); and (ii) The individual's income has not been verified to be within the applicable Medicaid income standard (§ 56.02(b)). (2) If the non-tax data (§ 56.01(b)) indicates that a tax filer's projected annual income is in excess of their attestation by more than twenty-five percent, AHS will proceed in accordance with § 57.00(c)(1)-(4). (3) If other information provided by the application filer indicates that a tax filer's projected annual household income is in excess of the individual's attestation by more than twenty-five percent, non-tax data (§ 56.01(b))

[45] 45 CFR § 155.320 (NPRM, 78 FR 4593)

[46] 45 CFR § 155.320(c)(3)(ii).

	will be used to verify the attestation. If such data are unavailable or information in such data is not reasonably compatible with the individual's attestation, AHS will proceed in accordance with § 57.00(c)(1)-(4).
56.04 Eligibility for alternate APTC and CSR verification procedures (10/01/2013, 13-12F)	
Eligibility for alternate verification procedures for decreases in annual household income and situations in which tax return data is unavailable[47]	AHS will determine a tax filer's annual household income for APTC and CSR based on the alternate verification procedures described in §§ 56.05 through 56.07 if: (a) An individual attests to the tax filer's projected annual household income; (b) The tax filer does not meet the criteria specified in § 56.03(c) (attestation of increase in household income); (c) The individuals in the tax filer's household have not established income through the process specified in § 56.02(b) (verification of income for Medicaid) that is within the applicable Medicaid MAGI-based income standard; and (d) One of the following conditions is met: (1) The Secretary of the Treasury does not have tax data that may be disclosed under § 6103(l)(21) of the Code for the tax filer that is at least as recent as the calendar year two years prior to the calendar year for which APTC or CSR would be effective; (2) The individual attests that: (i) The tax filer's applicable family size has changed or is reasonably expected to change for the benefit year for which the individuals in the tax filer's household are requesting coverage; or (ii) The members of the tax filer's household have changed or are reasonably expected to change for the benefit year for which the individuals in their family are requesting coverage; (3) The individual attests that a change in circumstances has occurred or is reasonably expected to occur, and so the tax filer's annual household income has decreased or is reasonably expected to decrease from the tax data (§ 56.01(a)) for the benefit year for which the individuals in the tax filer's household are requesting coverage; (4) The individual attests that the tax filer's filing status has changed or is reasonably expected to change for the benefit year for which the individual(s) in tax filer's household are requesting coverage; or (5) An individual in the tax filer's household has filed an application for

[47] 45 CFR § 155.320(c)(3)(iv) (NPRM, 78 FR 4593).

	unemployment benefits.
56.05 Alternate procedure: small decrease in projected household income[48] (10/01/2013, 13-12F)	
	If a tax filer qualifies for an alternate verification process and the individual's attestation to projected annual household income is no more than ten percent below the tax-based income calculation (§ 56.03(c)(2)), the individual's attestation will be accepted without further verification.
56.06 Alternate procedure: large decrease in projected household income and situations where tax return data is unavailable[49] (10/01/2013, 13-12F)	
(a) In general	AHS will attempt to verify the individual's attestation of the tax filer's projected annual household income with the process specified in (b) of this subsection if the tax filer qualifies for an alternate verification process and: (1) The individual's attestation to projected annual household income is greater than ten percent below the tax-based income calculation (§ 56.03(c)(2)); or (2) Tax data (§ 56.01(a)) is unavailable.
(b) Applicable process	The alternate verification process is as follows: (1) *Data.* Data from non-tax income sources will be annualized (§ 56.01(b)) (non-tax-based income calculation). (2) To the extent that the individual's attestation indicates that the non-tax-based income calculation (§ 56.06(b)(1)) represents an accurate projection of the tax filer's household income for the benefit year for which coverage is requested, the tax filer's eligibility for APTC and CSR will be determined based on such data. (3) If the individual's attestation indicates that the tax filer's projected annual household income is more than ten percent below the non-tax-based income calculation (§ 56.06(b)(1)), AHS will request additional documentation using the procedures specified in § 57.00.
56.07 Alternate procedure: Increases in household income when tax return data is unavailable[50](10/01/2013, 13-12F)	
(a) Attestation sufficient	Except as provided in paragraph (b) of this subsection, the individual's attestation for the tax filer's household will be accepted without further

[48] 45 CFR § 155.320(c)(3)(v) (NPRM, 78 FR 4593).

[49] 45 CFR § 155.320(c)(3)(vi) (NPRM, 78 FR 4593).

[50] 45 CFR § 155.320(c)(3)(vi)(C) (NPRM, 78 FR 4593).

	verification if: (1) The individual's attestation indicates that a tax filer's annual household income has increased or is reasonably expected to increase from the non-tax-based income calculation (§ 56.06(b)(1)); and (2) The individual's income has not been verified to be within the applicable Medicaid income standard (§ 56.02(b)).
(b) Additional verification required	Additional documentation will be requested using the procedures specified in § 57.00 if AHS finds that an individual's attestation of a tax filer's annual household income is not reasonably compatible with other information provided by the application filer or the non-tax data under § 56.01(b).
56.08 Alternate procedure: individual does not respond to request for additional information under § 56.06(b)(3) (10/01/2013, 13-12F)	
(a) Income within Medicaid standard	If, following the 90-day period described in § 57.00(c)(2)(ii) as required by § 56.06(b)(3), an individual has not responded to a request for additional information and the tax data (§ 56.01(a)) or non-tax data (§ 56.01(b)) indicate that an individual in the tax filer's household is eligible for Medicaid, the application for government-sponsored health benefits (for example, Medicaid, APTC or CSR) will be denied.
(b) Household income based on tax-return data available	If, following the 90-day period described in § 57.00(c)(2)(ii) as required by § 56.06(b)(3), the individual's attestation cannot be verified, AHS will determine the individual's eligibility based on AHS's tax-based income calculation (§ 56.03(c)(2)), notify the individual of such determination, and implement such determination in accordance with the effective dates specified in § 74.04.
(c) Household income based on tax-return data unavailable	If, following the 90-day period described in § 57.00(c)(2)(ii) as required by § 56.06(b)(3), the individual's attestation for the tax filer cannot be verified and tax-based income calculation (§ 56.03(c)(2)) is unavailable, AHS will determine the tax filer ineligible for APTC and CSR, notify the individual of such determination, and discontinue any APTC or CSR.
56.09 Verification related to eligibility for enrollment in a catastrophic plan[51] (10/01/2013, 13-12F)	
	An individual's attestation that they meet the requirements of § 14.00 (eligibility for enrollment in a catastrophic plan) will be verified by: (a) Verifying the individual's attestation of age as follows: (1) Except as provided in paragraph (a)(3) of this subsection, accepting their attestation without further verification; or (2) Examining electronic data sources that are available and which have been approved by HHS for this purpose, based on evidence showing

[51] 45 CFR § 155.315(j) (NPRM. 78 FR 4593).

	that such data sources are sufficiently current and accurate, and minimize administrative costs and burdens. (3) If information regarding age is not reasonably compatible with other information provided by the individual or in AHS's records, examining information in data sources that are available and which have been approved by HHS for this purpose based on evidence showing that such data sources are sufficiently current and accurate. (b) Verifying that an individual has received a certificate of exemption as described in § 14.00(b). (c) To the extent that the information required to determine eligibility for enrollment in a catastrophic plan as described in paragraphs (a) and (b) of this subsection is not able to be verified, the procedures specified in § 57.00, except for § 57.00(c)(4)(eligibility for APTC and CSR), will be followed.
56.10 Education and assistance (10/01/2013, 13-12F)	
	Education and assistance will be provided to an individual regarding the process specified in this section.
57.00 Inconsistencies (10/01/2013, 13-12F)	
(a) Reasonable compatibility[52]	(1) For purposes of QHP, information obtained through electronic data sources, other information provided by the applicant, or other information in AHS's records will be considered reasonably compatible with an applicant's attestation when the difference or discrepancy does not impact the eligibility of the individual or the benefits to which the individual may be entitled, including the APTC amount and CSR category. (2) For purposes of Medicaid, income information obtained through an electronic data match shall be considered reasonably compatible with income information provided by or on behalf of an individual if both are either above or at or below the applicable income standard or other relevant income threshold.
(b) Applicability of reasonable-compatibility procedures	Except as otherwise specified in this rule, the procedures outlined in this section will be used when: (1) Information needed in accordance with §§ 53.00 through 56.00 is not available electronically and establishing a data match would not be effective, considering such factors as the administrative costs associated with establishing and using the data match, compared with the administrative costs associated with relying on paper documentation, and the impact on program integrity in terms of the potential for ineligible individuals to be approved as well as for eligible

[52] 42 CFR § 435.952(c); 45 CFR § 155.300.

	individuals to be denied coverage; (2) AHS cannot verify information required to determine eligibility for health benefits, including when: (i) Electronic data is required but data for individuals relevant to the eligibility determination are not included in such data sources; or (ii) Electronic data is required but it is not reasonably expected that data sources will be available within two days of the initial request to the data source; or (3) Attested information that would not otherwise be verified is not reasonably compatible with other information that is provided by the application filer or that is otherwise available to AHS.
(c) Procedures for determining reasonable compatibility	In circumstances described in paragraph (b) of this section, AHS will: (1) Make a reasonable effort to identify and address the causes of such inconsistency, including through typographical or other clerical errors, by contacting the application filer to confirm the accuracy of the information submitted by the application filer. (2) If unable to resolve the inconsistency as provided in paragraph (c)(1) of this section, AHS will: (i) Provide notice to the individual regarding the inconsistency; and (ii) Provide the individual with a period of 90 days from the date on which such notice is sent to the individual to either present satisfactory documentary evidence via the channels available for the submission of an application, (except for by telephone through a call center), or otherwise resolve the inconsistency.[53] (3) The period described in paragraph (c)(2)(ii) of this section may be extended if the individual demonstrates that a good-faith effort has been made to obtain the required documentation during the period. (4) During the period described in paragraph (c)(2)(ii) of this section, AHS will, if relevant: (i) Proceed with all other elements of eligibility determination using the individual's attestation, and provide eligibility for enrollment in a QHP to the extent that an individual is otherwise qualified; and (ii) Ensure that APTC and CSR are provided on behalf of an individual

[53] CMS's Exchange regulations specify a 90-day response time. 45 CFR § 155.315(f). The Medicaid rule states only that states must provide the individual with a "reasonable period" to furnish any additional required information. 42 CFR § 435.952(c)(iii). In the interest of promoting administrative simplification and consistency, this rule adopts the Exchange rule's 90-day period as the "reasonable period" required in the Medicaid rule.

	within this period who is otherwise qualified for such payments and reductions, if the tax filer attests that they understand that any APTC paid on their behalf is subject to reconciliation. (5) If, after the period described in paragraph (c)(2)(ii) of this section, the attestation is not able to be verified and the individual's ineligibility for Medicaid can be determined based on available information, AHS will: (i) Determine the individual's eligibility for APTC and CSR based on the information available from the data sources specified above, unless such individual qualifies for the exception provided under paragraph (d) of this section, and notify the individual of such determination, including notice that AHS is unable to verify the attestation; and (ii) Effectuate the determination of eligibility no earlier than 10 days after and no later than 30 days after the date on which the notice of decision is sent. (6) If, after the period described in paragraph (c)(2)(ii) of this section, AHS remains unable to verify the attestation and AHS cannot determine, based on available information, that the individual is ineligible for Medicaid, it will deny the application or disenroll the individual on the basis of the individual's noncompliance with the verification request.[54]
(d) Exception for special circumstances[55]	(1) Except for an inconsistency related to citizenship or immigration status, an exception may be provided, on a case-by-case basis, to accept an individual's attestation as to the information which cannot otherwise be verified, because such documentation: (i) Does not exist; or (ii) Is not reasonably available. (2) To receive such an exception: (i) The inconsistency must not be able to be otherwise resolved; and (ii) The individual must provide an adequate explanation of the circumstances as to why they cannot obtain the documentation needed to resolve the inconsistency.
(e) Pursuit of additional information in cases where verification data is not reasonably compatible	Eligibility will not be denied or terminated nor benefits reduced for any individual on the basis of verification information received in accordance with this part Seven unless additional information from the individual has been sought in accordance with this section, and proper notice and hearing rights have been

[54] It is a condition of eligibility for APTC and CSR that the individual is not eligible for government-sponsored MEC; 26 CFR § 1.36B-2(a)(2). In this case, the individual's failure to respond to the verification request precludes the determination of this condition of eligibility.

[55] 42 CFR § 435.952(c)(3) (NPRM, 78 FR 4593); 45 CFR § 155.315(g).

with information provided for or on behalf of an individual[56]	provided to the individual.
58.00 Determination of eligibility[57] (10/01/2013, 13-12F)	
58.01 In general[58] (10/01/2013, 13-12F)	
(a) MAGI screen[59]	For each individual who has submitted an application for health benefits, or whose eligibility is being renewed, and who meets the nonfinancial requirements for eligibility (or for whom AHS is providing a reasonable opportunity to verify citizenship or immigration status), AHS will do the following: (1) Promptly and without undue delay, consistent with timeliness standards established under § 61.00, furnish MAGI-based Medicaid to each such individual whose household income is at or below the applicable MAGI-based standard. (2) For each individual described in paragraph (c) of this subsection (individuals subject to determination of Medicaid eligibility on a basis other than the applicable MAGI-based income standard), collect such additional information as may be needed to determine whether such individual is eligible for Medicaid on any basis other than the applicable MAGI-based income standard, and furnish Medicaid on such basis. (3) For an individual who submits an application or renewal form which includes sufficient information to determine Medicaid eligibility, or whose eligibility is being renewed pursuant to a change in circumstance, and whom AHS determines is not eligible for Medicaid, promptly and without undue delay, determine potential eligibility for other health-benefits programs.
(b) MAGI-based income standards for certain individuals enrolled for Medicare benefits[60]	In the case of an individual who has attained at least age 65 and an individual who has attained at least age 19 and who is entitled to or enrolled for Medicare benefits under part A or B or Title XVIII of the Act, there is no applicable MAGI-based standard, except that in the case of such an individual: (1) Who is also pregnant, the applicable MAGI-based standard is the standard established under § 7.03(a)(2); and (2) Who is also a parent or caretaker relative (as defined in § 3.00), the applicable MAGI-based standard is the standard established under §

[56] 42 CFR § 435.952(d).

[57] 42 CFR § 435.911 (NPRM, 78 FR 4593); 45 CFR § 155.310; 45 CFR § 155.345.

[58] 42 CFR §§ 435.911(c) (NPRM, 78 FR 4593) and 435.1200(e).

[59] 42 CFR § 435.911(c) (NPRM, 78 FR 4593).

[60] 42 CFR § 435.911(b)(2) (NPRM, 78 FR 4593).

	7.03(a)(1).
(c) Individuals subject to determination of Medicaid eligibility on basis other than the applicable MAGI-based income standard[61]	For purposes of paragraph (a)(2) of this subsection, an individual includes: (1) An individual who is identified, on the basis of information contained in an application or renewal form, or on the basis of other information available, as potentially eligible on a basis other than the applicable MAGI-based standard; and (2) An individual who otherwise requests a determination of eligibility on a basis other than the applicable MAGI-based standard.
(d) Individuals requesting additional screening[62]	An individual will be notified of the opportunity to request a full determination of eligibility for Medicaid on a basis other than the applicable MAGI-based income standard, and will be provided such an opportunity. Such notification will also be made to an enrollee, and such opportunity provided in any redetermination of eligibility.
(e) Determination of eligibility for Medicaid on a basis other than the applicable MAGI-based income standard[63]	If an individual is identified as potentially eligible for Medicaid on a basis other than the applicable MAGI-based income standard or an individual requests a full determination for Medicaid under paragraph (d) of this subsection, and the individual provides all additional information needed to determine eligibility for such benefits, eligibility will be determined promptly and without undue delay, as provided in this section.
(f) Eligibility for APTC and CSR, pending determination of eligibility for Medicaid[64]	An individual who is described in paragraph (e) of this subsection and has not been determined eligible for Medicaid based on MAGI-based income standards will be considered as ineligible for Medicaid for purposes of eligibility for APTC or CSR until the individual is determined eligible for Medicaid.
(g) Special rule[65]	(1) If: (i) A tax filer's household income, using MAGI methodologies for purposes of determining eligibility for APTC and CSR, is verified to be less than 100 percent of the FPL for the benefit year for which coverage is requested; (ii) The tax filer is determined to be not eligible for APTC based on the special rule for non-citizens who are lawfully present and who are ineligible for Medicaid by reason of immigration status (§ 12.03(e));

[61] 42 CFR § 435.911(d).

[62] 45 CFR § 155.345(c).

[63] 42 CFR § 435.911(c); 45 CFR § 155.345(d).

[64] 45 CFR § 155.345(e).

[65] 45 CFR § 155.345(f).

	and (iii) One or more individuals in the tax filer's household have been determined ineligible for Medicaid based on income: (2) AHS will: (i) Provide the individual with any information regarding income used in the Medicaid eligibility determination; and (ii) Follow the procedures specified in § 56.03.
58.02 Special rules relating to APTC[66] (10/01/2013, 13-12F)	
	(a) An individual may accept less than the full amount of APTC for which the individual is determined eligible. (b) Before APTC on behalf of a tax filer may be authorized, the tax filer must provide necessary attestations, including, but not limited to, attestations that: (1) They will file an income tax return for the benefit year, in accordance with 26 USC §§ 6011 and 6012, and implementing regulations; (2) If married (within the meaning of 26 CFR § 1.7703-1), they will file a joint tax return for the benefit year;[67] (3) No other tax filer will be able to claim them as a tax dependent for the benefit year; and (4) They will claim a personal exemption deduction on their tax return for the individuals identified as members of their household, including the tax filer and their spouse, in accordance with § 56.03(a).[68]
59.00 Special eligibility standards and process for Indians[69] (10/01/2013, 13-12F)	
59.01 Eligibility for CSR (10/01/2013, 13-12F)	
	(a) An individual who is an Indian will be determined eligible for CSR if they:

[66] 45 CFR § 155.310(d)(2)(i) and (ii).

[67] Federal law does not recognize same-sex marriages or civil unions. Therefore, Vermont couples in these relationships may not file a joint tax return.

[68] 45 CFR § 155.320(c)(3)(i).

[69] 45 CFR § 155.350 (NPRM, 78 FR 4593).

	(1) Meet the requirements specified in §§ 11.00 and 12.00; and (2) Are expected to have household income, using MAGI methodologies for purposes of determining eligibility for APTC and CSR, that does not exceed 300 percent of the FPL for the benefit year for which coverage is requested. (b) CSR may be provided to an individual who is an Indian only if they are enrolled in a QHP.
59.02 Special cost-sharing rule for Indians regardless of income (10/01/2013, 13-12F)	
	An individual must be determined eligible for the special cost-sharing rule described in § 1402(d)(2) of the ACA (items or services furnished through Indian health providers) if the individual is an Indian, without requiring the individual to request an eligibility determination for health-benefits programs in order to qualify for this rule.
59.03 Verification related to Indian status[70] (10/01/2013, 13-12F)	
	To the extent that an individual attests that they are an Indian, such attestation will be verified by: (a) Utilizing any relevant documentation verified in accordance with § 53.00; (b) Relying on any electronic data sources that are available and which have been approved by HHS for this purpose, based on evidence showing that such data sources are sufficiently accurate and offer less administrative complexity than paper verification; or (c) To the extent that approved data sources are unavailable, an individual is not represented in available data sources, or data sources are not reasonably compatible with an individual's attestation, follow the procedures specified in § 53.00 and verify documentation provided by the individual in accordance with the standards for acceptable documentation provided in § 54.07(b)(5).
60.00 Computing the premium-assistance credit amount[71] (10/01/2013, 13-12F)	
60.01 In general[72] (10/01/2013, 13-12F)	
	A tax filer's premium assistance credit amount for a benefit year is the sum of the premium-assistance amounts determined under § 60.04 for all coverage months

[70] 45 CFR § 155.350.

[71] 26 CFR § 1.36B-3.

[72] 26 CFR § 1.36B-3(a).

	for individuals in the tax filer's household.
60.02 Definitions[73] (10/01/2013, 13-12F)	
	For purposes of this section:
(a) Cost of a QHP	The premium the plan charges.
(b) Coverage family	Members of the tax filer's household who enroll in a QHP and are not eligible for other MEC.
60.03 Coverage month[74] (10/01/2013, 13-12F)	
(a) In general	A month is a coverage month for an individual if: (1) As of the first day of the month, the individual is enrolled in a QHP; (2) The tax filer pays the tax filer's share of the premium for the individual's coverage under the plan for the month by the unextended due date for filing the tax filer's income tax return for that benefit year, or the full premium for the month is paid by APTC; and (3) The individual is not eligible for the full calendar month for MEC other than coverage in the individual market.
(b) Premiums paid for a tax filer	Premiums another person pays for coverage of the tax filer, tax filer's spouse, or tax dependent are treated as paid by the tax filer.
(c) Examples	The following examples illustrate the provisions of this § 60.03:
(1) Example 1: Tax filer M is single with no tax dependents	(i) In December 2013, M enrolls in a QHP for 2014 and AHS approves APTC. M pays M's share of the premiums. On May 15, 2014, M enlists in the U.S. Army and is eligible immediately for government-sponsored MEC. (ii) Under paragraph (a) of this subsection, January through May 2014 are coverage months for M. June through December 2014 are not coverage months because M is eligible for other MEC for those months. Thus, under § 60.01, M's premium assistance credit amount for 2014 is the sum of the premium-assistance amounts for the months January through May.
(2) Example 2: Tax filer N has one tax dependent	(i) S is eligible for government-sponsored MEC. N is not eligible for MEC other than through VHC. N enrolls in a QHP for 2014 and AHS

[73] 26 CFR § 1.36B-3(b).

[74] 26 CFR § 1.36B-3(c).

	S	approves APTCs. On August 1, 2014, S loses eligibility for government-sponsored MEC. N terminates enrollment in the QHP that covers only N and enrolls in a QHP that covers N and S for August through December 2014. N pays all premiums not covered by APTCs. (ii) Under paragraph (a) of this subsection, January through December of 2014 are coverage months for N and August through December are coverage months for N and S. N's premium assistance credit amount for 2014 is the sum of the premium-assistance amounts for these coverage months.
(3)	Example 3: O and P are the divorced parents of T	(i) Under the divorce agreement between O and P, T resides with P and P claims T as a tax dependent. However, O must pay premiums for health insurance for T. P enrolls T in a QHP for 2014. O pays the portion of T's QHP premiums not covered by APTCs. (ii) Because P claims T as a tax dependent, P (and not O) may claim a premium tax credit for coverage for T. See § 1.36B-2(a) of the Code. Under paragraph (b) of this subsection, the premiums that O pays for coverage for T are treated as paid by P. Thus, the months when T is covered by a QHP and not eligible for other MEC are coverage months under paragraph (a) of this subsection in computing P's premium tax credit under § 60.01.
(4)	Example 4: Q, an American Indian, enrolls in a QHP for 2014	Q's tribe pays the portion of Q's QHP premiums not covered by APTCs. Under paragraph (b) of this subsection, the premiums that Q's tribe pays for Q are treated as paid by Q. Thus, the months when Q is covered by a QHP and not eligible for other MEC are coverage months under paragraph (b) of this subsection in computing Q's premium tax credit under § 60.01.
60.04 Premium-assistance amount[75] (10/01/2013, 13-12F)		
		The premium-assistance amount for a coverage month is the lesser of: (a) The premiums for the month for one or more QHPs in which a tax filer or a member of the tax filer's household enrolls; or (b) The excess of the monthly premium for the applicable benchmark plan (ABP) (§ 60.06) over 1/12 of the product of a tax filer's household income and the applicable percentage for the benefit year.
60.05 Monthly premium for ABP[76] (10/01/2013, 13-12F)		

[75] 26 CFR § 1.36B-3(d).

[76] 26 CFR § 1.36B-3(e).

	The monthly premium for an ABP is the premium an issuer would charge for the ABP to cover all members of the tax filer's coverage family. The monthly premium is determined without regard to any premium discount or rebate under the wellness discount demonstration project under § 2705(d) of the Public Health Service Act (42 USC §§ 300gg-4(d)) and may not include any adjustments for tobacco use.
60.06 Applicable benchmark plan (ABP)[77] (10/01/2013, 13-12F)	
(a) In general	Except as otherwise provided in this subsection, the ABP for each coverage month is the second-lowest-cost silver plan offered through VHC for: (1) Self-only coverage for a tax filer: (i) Who computes tax under § 1(c) of the Code (unmarried individuals other than surviving spouses and heads of household) and is not allowed a deduction under § 151 of the Code for a tax dependent for the benefit year; (ii) Who purchases only self-only coverage for one individual; or (iii) Whose coverage family includes only one individual; and (2) Family coverage for all other tax filers.
(b) Family coverage	The ABP for family coverage is the second-lowest-cost silver plan that applies to the members of the tax filer's coverage family (such as a plan covering two adults if the members of a tax filer's coverage family are two adults).
(c) Silver-level plan not covering a tax filer's family	If one or more silver-level plans for family coverage do not cover all members of a tax filer's coverage family under one policy (for example, because of the relationships within the family), the premium for the ABP determined under paragraphs (a) and (b) of this subsection may be the premium for a single policy or for more than one policy, whichever is the second-lowest-cost silver option. (See, example 10 in paragraph (g) of this subsection.)
(d) Family members residing at different locations	[Reserved]
(e) Plan closed to enrollment	A QHP that is not open to enrollment by a tax filer or a member of the tax filer's household at the time the tax filer or member enrolls in a QHP is disregarded in determining the ABP.
(f) Benchmark plan terminates or closes to enrollment during the year	A QHP that is the ABP under this subsection for a tax filer does not cease to be the ABP solely because the plan or a lower cost plan terminates or closes to enrollment during the benefit year.
(g) Examples	The following examples illustrate the rules of this subsection. Unless otherwise stated, in each example the plans are open to enrollment to a tax filer or a

[77] 26 CFR § 1.36B-3(f).

	member of the tax filer's household at the time of enrollment and are offered through VHC:
(1) Example 1. Single tax filer enrolls	Tax filer M is single, has no dependents and enrolls in a QHP. Under paragraph (a)(1) of this subsection, M's ABP is the second-lowest-cost silver plan providing self-only coverage for M.
(2) Example 2. Family enrolls	The facts are the same as in Example 1, except that M, her spouse, N, and their tax dependent enroll in a QHP. Under paragraphs (a)(2) and (b) of this subsection, M's and N's ABP is the second-lowest-cost silver plan covering M, N, and their tax dependent.
(3) Example 3. Single tax filer enrolls with nondependent	Tax filer O is single and resides with his daughter, K, but may not claim K as a tax dependent. O purchases family coverage for himself and K. Under paragraphs (a)(1)(i) and (a)(1)(iii) of this subsection, O's ABP is the second-lowest-cost silver plan providing self-only coverage for O. However, K may qualify for a premium tax credit if K is otherwise eligible. See § 60.08.
(4) Example 4. Single tax filer enrolls with dependent and nondependent	The facts are the same as in Example 3, except that O also resides with his teenage son, L, and claims L as a tax dependent. O purchases family coverage for himself, K, and L. Under paragraphs (a)(2) and (b) of this subsection, O's ABP is the second-lowest-cost silver plan covering O and L.
(5) Example 5. Children only enroll	The facts are the same as in Example 4, except that O enrolls only K and L in the coverage. Under paragraph (a)(1)(iii) of this subsection, O's ABP is the second-lowest-cost silver plan providing self-only coverage for L.
(6) Example 6. ABP unrelated to coverage purchased	Tax filers P and Q, who are married, reside with Q's two teenage daughters, M and N, whom they claim as tax dependents. P and Q purchase self-only coverage for P and family coverage for Q, M, and N. Under paragraphs (a)(2) and (b) of this subsection, P's and Q's ABP is the second-lowest-cost silver plan covering P, Q, M, and N.
(7) Example 7. Change in coverage family	Tax filer R is single and has no tax dependents when she enrolls in a QHP for 2014. On August 1, 2014, R has a child, O, whom she claims as a tax dependent for 2014. R enrolls in a QHP covering R and O effective August 1. Under paragraph (a)(1) of this subsection, R's ABP for January through July is the second-lowest-cost silver plan providing self-only coverage for R. Under paragraphs (a)(2) and (b) of this section, R's ABP for the months August through December is the second-lowest-cost silver plan covering R and O.
(8) Example 8. Other MEC for some coverage months	Tax filer S claims his daughter, P, as a tax dependent. S and P enroll in a QHP for 2014. S, but not P, is eligible for government-sponsored MEC for September to December 2014. Thus, under paragraph (a)(3) of § 60.03, January through December are coverage months for P and January through August are coverage months for S. Because, under § 60.04 and paragraph (a) of this subsection, the premium-assistance amount for a coverage month is computed based on the ABP for that coverage month, S's ABP for January through August is the second-lowest-cost silver plan under paragraphs (a)(2) and (b) of this subsection covering S and P. Under paragraph (a)(1)(iii) of this subsection, S's ABP for September through December is the second-lowest-cost silver plan providing self-only coverage for P.

(9) Example 9. Family member eligible for other MEC for the benefit year	The facts are the same as in Example 8, except that S is not eligible for government-sponsored MEC for any months and P is eligible for government-sponsored MEC for the entire year. Under paragraph (a)(1)(iii) of this subsection, S's ABP is the second-lowest-cost silver plan providing self-only coverage for S.
(10) Example 10. QHPs not covering certain families	(i) Tax filers V and W are married and live with W's mother, K, whom they claim as a tax dependent. The Exchange offers self-only and family coverage at the silver level through Issuers A, B, and C, who each offer only one silver-level plan. Issuers A and B respectively charge V and W a monthly premium of $900 and $700 for family coverage, but do not allow individuals to enroll a parent in family coverage. Issuers A and B respectively charge $600 and $400 for self-only coverage for K. Issuer C offers a QHP that provides family coverage for V, W, and K under one policy for a $1,200 monthly premium. Thus, the Exchange offers the following silver-level options for covering V's and W's coverage family: (A) Issuer A: $1,500 for premiums for two policies ($900 for V and W, $600 for K) (B) Issuer B: $1,100 for premiums for two policies ($700 for V and W, $400 for K) (C) Issuer C: $1,200 for premiums for one policy ($1,200 for V, W, and K) (ii) Because some silver-level QHPs for family coverage offered on the Exchange do not cover all members of their coverage family under one policy, under paragraph (c) of this subsection, the premiurn for V's and W's ABP may be the premium for a single policy or for more than one policy. The coverage offered by Issuer C is the second-lowest-cost silver-level option for covering V's and W's family. The premium for their ABP is the premium for the Issuer C coverage.
(11) Example 11	(i) The facts are the same as in Example 10, except that Issuer B covers V, W, and K under one policy for a premium of $1,100, and Issuer C does not allow individuals to enroll parents in family coverage. Issuer C charges a monthly premium of $700 for family coverage for V and W and a monthly premium of $500 for self-only coverage for K. Thus, the Exchange offers the following silver-level options for covering V's and W's coverage family: (A) Issuer A: $1,500 for premiums for two policies ($900 for V and W, $600 for K) (B) Issuer B: $1,100 for premiums for one policy ($1,100 for V, W, and K) (C) Issuer C: $1,200 for premiums for two policies ($700 for V and W, $500 for K)

	(ii) The coverage offered by issuer C is the second-lowest-cost silver-level option for covering V's and W's family. The premium for their ABP is the premiums for the two policies available through Issuer C.
(12) Example 12. Family members residing in different locations	[Reserved]
(13) Example 13. QHP closed to enrollment	Tax filer Y has two tax dependents, R and S. Y, R, and S enroll in a QHP. The Exchange offers silver-level plans J, K, L, and M, which are the first, second, third, and fourth lowest cost silver plans covering Y's family. When Y's family enrolls, Plan J is closed to enrollment. Under paragraph (e) of this subsection, Plan J is disregarded in determining Y's ABP, and Plan L is Y's ABP.
(14) Example 14. Benchmark plan closes to new enrollees during the year	(i) Tax filers X, Y, and Z each have coverage families consisting of two adults. In the rating area where X, Y, and Z reside, Plan 2 is the second-lowest-cost silver plan and Plan 3 is the third lowest cost silver plan covering the two adults in each coverage family offered through the Exchange. The X and Y families each enroll in a QHP that is not the ABP (Plan 4) in November during the AOEP. Plan 2 closes to new enrollees the following June. Thus, on July 1, Plan 3 is the second-lowest-cost silver plan available to new enrollees through the Exchange. The Z family enrolls in a QHP in July. (ii) Under paragraphs (a), (b), and (f) of this subsection, the ABP is Plan 2 for X and Y for all coverage months during the year. The ABP for Z is Plan 3, because Plan 2 is not open to enrollment through the Exchange when the Z family enrolls.
(15) Example 15. Benchmark plan terminates for all enrollees during the year	The facts are the same as in Example 14, except that Plan 2 terminates for all enrollees on June 30. Under paragraphs (a), (b), and (f) of this subsection, Plan 2 is the ABP for X and Y for all coverage months during the year, and Plan 3 is the ABP for Z.
60.07 Applicable percentage[78] (10/01/2013, 13-12F)	
(a) In general	The applicable percentage multiplied by a tax filer's household income determines the tax filer's required share of premiums for the ABP. This required share is subtracted from the monthly premium for the ABP when computing the premium-assistance amount. The applicable percentage is computed by first determining the percentage that the tax filer's household income bears to the FPL for the tax filer's family size. The resulting FPL percentage is then compared to the income categories described in the table in paragraph (b) of this subsection (or successor tables). An applicable percentage within an income category increases on a sliding scale in a linear manner and is rounded to the

[78] 26 CFR § 1.36B-3(g).

	nearest one-hundredth of one percent. The applicable percentages in the table may be adjusted in published guidance,[79] for benefit years beginning after December 31, 2014, to reflect rates of premium growth relative to growth in income and, for benefit years beginning after December 31, 2018, to reflect rates of premium growth relative to growth in the consumer price index.
(b) Applicable percentage table	

Household income percentage of FPL	Initial percentage	Final percentage
Less than 133%	2.0	2.0
At least 133% but less than 150%	3.0	4.0
At least 150% but less than 200%	4.0	6.3
At least 200% but less than 250%	6.3	8.05
At least 250% but less than 300%	8.05	9.5
At least 300% but not more than than 400%	9.5	9.5

(c) Examples	The following examples illustrate the rules of this subsection:
(1) Example 1. A's household income is 275 percent of the FPL for A's family size for that benefit year	In the table in paragraph (b) of this subsection, the initial percentage for a tax filer with household income of 250 to 300 percent of the FPL is 8.05 and the final percentage is 9.5. A's FPL percentage of 275 percent is halfway between 250 percent and 300 percent. Thus, rounded to the nearest one-hundredth of one percent, A's applicable percentage is 8.78, which is halfway between the initial percentage of 8.05 and the final percentage of 9.5.
(2) Example 2	(i) B's household income is 210 percent of the FPL for B's family size. In the table in paragraph (b) of this subsection, the initial percentage for a tax filer with household income of 200 to 250 percent of the FPL is 6.3 and the final percentage is 8.05. B's applicable percentage is 6.65, computed as follows. (ii) Determine the excess of B's FPL percentage (210) over the initial household income percentage in B's range (200), which is 10. Determine the difference between the initial household income percentage in the tax filer's range (200) and the ending household income percentage in the tax filer's range (250), which is 50. Divide the first amount by the second amount:

[79] See § 601.601(d)(2) of chapter one of the Code.

	210-200 = 10 250-200 = 50 10/50 = .20. (iii) Compute the difference between the initial premium percentage (6.3) and the second premium percentage (8.05) in the tax filer's range; 8.05-6.3 = 1.75. (iv) Multiply the amount in the first calculation (.20) by the amount in the second calculation (1.75) and add the product (.35) to the initial premium percentage in B's range (6.3), resulting in B's applicable percentage of 6.65: .20 x 1.75 = .35 6.3 + .35 = 6.65.
60.08 Plan covering more than one household[80] (10/01/2013, 13-12F)	
(a) In general	If a QHP covers more than one household under a single policy, each applicable tax filer covered by the plan may claim a premium tax credit, if otherwise allowable. Each tax filer computes the credit using that tax filer's applicable percentage, household income, and the ABP that applies to the tax filer under § 60.06. In determining whether the amount computed under § 60.04(a) (the premiums for the QHP in which the tax filer enrolls) is less than the amount computed under § 60.04(b) (the benchmark plan premium minus the product of household income and the applicable percentage), the premiums paid are allocated to each tax filer in proportion to the premiums for each tax filer's ABP.
(b) Example: Tax filers A and B enroll in a single policy under a QHP.	The following example illustrates the rules of this subsection: (1) B is A's 25-year old child who is not A's tax dependent. B has no tax dependents. The plan covers A, B, and A's two additional children who are A's dependents. The premium for the plan in which A and B enroll is $15,000. The premium for the second-lowest-cost silver family plan covering only A and A's tax dependents is $12,000 and the premium for the second-lowest-cost silver plan providing self-only coverage to B is $6,000. A and B are applicable tax filers and otherwise eligible to claim the premium tax credit. (2) Under paragraph (a) of this subsection, both A and B may claim premium tax credits. A computes her credit using her household income, a family size of three, and a benchmark plan premium of $12,000. B computes his credit using his household income, a family size of one, and a benchmark plan premium of $6,000. (3) In determining whether the amount in § 60.04(a) (the premiums for the QHP A and B purchase) is less than the amount in § 60.04(b) (the

[80] 26 CFR § 1.36B-3(h).

	benchmark plan premium minus the product of household income and the applicable percentage), the $15,000 premiums paid are allocated to A and B in proportion to the premiums for their ABPs. Thus, the portion of the premium allocated to A is $10,000 ($15,000 x $12,000/$18,000) and the portion allocated to B is $5,000 ($15,000 x $6,000/$18,000).
60.09 [Reserved] (10/01/2013, 13-12F)	
60.10 Additional benefits[81] (10/01/2013, 13-12F)	
(a) In general	If a QHP offers benefits in addition to the essential health benefits a QHP must provide, the portion of the premium for the plan properly allocable to the additional benefits is excluded from the monthly premiums under § 60.04(a) or (b).
(b) Method of allocation	The portion of the premium properly allocable to additional benefits is determined under guidance issued by the Secretary of HHS.[82]
(c) Examples	The following examples illustrate the rules of this subsection:
(1) Example 1	(i) Tax filer B enrolls in a QHP that provides benefits in addition to the essential health benefits the plan must provide (additional benefits). The monthly premium for the plan in which B enrolls is $385 (Amount 1), of which $35 is allocable to the additional benefits. The premium for B's ABP is $440, of which $40 is allocable to the additional benefits. The excess of the premium for B's ABP over B's $60 contribution amount (which is the product of B's household income and the applicable percentage) is $380 per month (Amount 2). (ii) Under this subsection, the premium for the QHP in which B enrolls and the applicable benchmark premium each is reduced by the portion of the premium that is allocable to the additional benefits provided under that plan. Therefore, Amount 1 is reduced to $350 ($385-$35), the premium for B's ABP is reduced to $400 ($440-$40), and Amount 2 is reduced to $340 ($400 less $60). B's premium-assistance amount for a coverage month is $340, the lesser of Amount 1 and Amount 2.
(2) Example 2	The facts are the same as in Example 1, except that B's ABP provides no benefits in addition to the essential health benefits required to be provided by the plan. Thus, under this subsection, only the amount of the monthly premium for the plan in which B enrolls is reduced by the portion of the premium that is allocable to the additional benefits provided under that plan, and Amount 1 is $350 ($385-$35). The premium for B's ABP is not reduced under this subsection, and Amount 2 is $380 ($440-$60). B's premium-assistance amount for a

[81] 26 CFR § 1.36B-3(j).

[82] See § 36B(b)(3)(D) of the Code.

	coverage month is $350, the lesser of these two amounts.
60.11 Pediatric dental coverage[83] (10/01/2013, 13-12F)	
(a) In general	For purposes of determining the amount of the monthly premium a tax filer pays for coverage under § 60.04(a), if an individual enrolls in both a QHP and a stand-alone dental plan, the portion of the premium for the stand-alone dental plan that is properly allocable to pediatric dental benefits that are essential benefits required to be provided by a QHP is treated as a premium payable for the individual's QHP.
(b) Method of allocation	The portion of the premium for a stand-alone dental plan properly allocable to pediatric dental benefits is determined under guidance issued by the Secretary of HHS.
(c) Example	The following example illustrates the rules of this subsection: (1) Tax filer C and C's tax dependent, R, enroll in a QHP. The premium for the plan in which C and R enroll is $7,200 ($600/month) (Amount 1). The plan does not provide dental coverage. C also enrolls in a stand-alone dental plan covering C and R. The portion of the premium for the dental plan allocable to pediatric dental benefits that are essential health benefits is $240 ($20 per month). The excess of the premium for C's ABP over C's contribution amount (the product of C's household income and the applicable percentage) is $7,260 ($605/month) (Amount 2). (2) Under this subsection, the amount C pays for premiums (Amount 1) for purposes of computing the premium-assistance amount is increased by the portion of the premium for the stand-alone dental plan allocable to pediatric dental benefits that are essential health benefits. Thus, the amount of the premiums for the plan in which C enrolls is treated as $620 for purposes of computing the amount of the premium tax credit. C's premium-assistance amount for each coverage month is $605 (Amount 2), the lesser of Amount 1 (increased by the premiums allocable to pediatric dental benefits) and Amount 2.
60.12 Households that include individuals who are not lawfully present[84] (10/01/2013, 13-12F)	
(a) In general	If one or more individuals for whom a tax filer is allowed a deduction under § 151 of the Code are not lawfully present (see § 17.01(g) for definition of lawfully present), the percentage a tax filer's household income bears to the FPL for the tax filer's family size for purposes of determining the applicable percentage under § 60.07 is determined by excluding individuals who are not lawfully present from family size and by determining household income in accordance

[83] 26 CFR § 1.36B-3(k).

[84] 26 CFR § 1.36B-3(l).

	with paragraph (b) of this subsection.
(b) Revised household income computation	
(1) Statutory method	For purposes of (a) of this subsection, household income is equal to the product of the tax filer's household income (determined without regard to this paragraph (b)) and a fraction: (i) The numerator of which is the FPL for the tax filer's family size determined by excluding individuals who are not lawfully present; and (ii) The denominator of which is the FPL for the tax filer's family size determined by including individuals who are not lawfully present.
(2) Comparable method	The IRS Commissioner may describe a comparable method in additional published guidance.[85]
61.00 Timely determination of eligibility[86] (10/01/2013, 13-12F)	
(a) In general	(1) AHS strives to complete eligibility determinations for health-benefits programs promptly and without undue delay. The amount of time needed to complete such determinations will necessarily vary, depending on such factors as: (i) The capabilities and cost of generally-available systems and technologies; (ii) The general availability of electronic data matching and ease of connections to electronic sources of authoritative information to determine and verify eligibility; and (iii) The needs of an individual, including: (A) Individual preferences for mode of application (such as through an internet Website, telephone, mail, in-person, or other commonly available electronic means); and (B) The relative complexity of adjudicating the eligibility determination based on household, income or other relevant information. (2) An eligibility determination is complete once AHS sends written notice of decision to the individual.
(b) Real-time determination of eligibility	When an individual files a complete, accurate and web-based application and relevant data can be fully verified through the use of available electronic means,

[85] See § 601.601(d)(2) of chapter one of the Code.

[86] 42 CFR § 435.912; 45 CFR § 155.310(e).

	an individual can expect a real-time or near-real-time eligibility determination.
(c) Normal maximum time for determining eligibility[87]	In cases involving such factors as described in paragraph (a) of this section, eligibility determinations may require additional time to complete. In any event, a decision on a health-benefits application will be made as soon as possible, but no later than: (1) 90 days after the application date, if the application is based on a person's disability; or (2) 30 days after the application date for any other health-benefits application.
(d) Extenuating circumstances	A determination may take longer in unusual situations, such as: (1) An individual delays providing needed verification or other information; (2) An examining physician delays sending a necessary report; or (3) An unexpected emergency or administrative problem outside the control of AHS delays action on applications.
(e) Notice of timeliness standards	Individuals will be informed of the timeliness standards set forth in this section.
62.00 Interviews (10/01/2013, 13-12F)	
	An in-person interview will not be required as part of the application process for a determination of eligibility using MAGI-based income. However, an interview may be required for eligibility determinations for which MAGI-based methods do not apply, including individuals applying for MABD for long-term care services.
63.00 Individual choice (10/01/2013, 13-12F)	
(a) Choice of Medicaid category[88]	If an individual would be eligible under more than one Medicaid category, the individual may choose to have eligibility determined for the category of the individual's choosing.
(b) Choice to determine eligibility for health-benefits programs[89]	An individual may request only an eligibility determination for enrollment in a QHP without APTC or CSR. However, the individual may not request an eligibility determination for less than all of the government-sponsored health-benefits programs. For example, if an individual seeks a subsidy to help pay for the cost of QHP coverage, they may not limit their application to APTC or CSR. Rather, they must likewise submit to a determination of eligibility for Medicaid.

[87] 42 CFR § 435.912(c)(3).

[88] 42 CFR § 435.404.

[89] 45 CFR 155.310(b).

64.00 Premiums (10/01/2013, 13-12F)

64.01 In general (10/01/2013, 13-12F)

(a) Scope	An individual who is enrolled in a QHP, as well as some Medicaid enrollees, are required to pay monthly premiums.
(b) Medicaid premium methodologies and amounts	The Vermont legislature sets Medicaid premium methodologies and amounts. Premium schedules are made publicly available via website.
(c) Determination of premium obligation	(1) As a part of the health-benefits application, redetermination, and renewal processes, AHS will determine whether an individual will be required to pay monthly premiums. (2) The premium amount will be recalculated when: (i) AHS is informed of a change in income, family size, or health-insurance status, or (ii) An adjustment is made in premium amounts or calculation methodologies. (3) A change that affects the premium amount will appear on the next regularly-scheduled monthly bill, created after the premium amount is recalculated.
(d) Premium calculation	(1) If a premium calculation depends on income, the calculation will be based on the household's income, as established on the most recent approved version of eligibility on the case record at the time that the premium bill is generated. (2) Prior to the start of the coverage month pertaining to the bill in question, an individual may notify AHS to show that, due to changed household circumstances, the individual is eligible for nonpremium-based coverage or a lower premium amount. (i) If the showing indicates that the individual is eligible for nonpremium-based coverage for the coverage month, the individual will be enrolled in such coverage, effective the first day of such coverage month. (ii) If the showing indicates that the individual is eligible for premium-based coverage, but at a lower premium amount, any outstanding premium amount due will be adjusted. (3) No premium adjustments will be made for the coverage month if the individual notifies AHS after the start of that coverage month to show that the individual is eligible for nonpremium-based coverage or a lower premium amount. If the individual is entitled to a premium change, the

	change will be applied to the following coverage month.
(e) Aggregate limits for Medicaid premiums[90]	(1) Subject to paragraph (e)(2) of this subsection, any Medicaid premiums and cost sharing incurred by all individuals in the Medicaid household may not exceed an aggregate limit of five percent of the household income applied on a quarterly basis. (2) The individual and providers will be notified when the individual has incurred out-of-pocket expenses up to the aggregate family limit and individual family members are no longer subject to cost sharing for the remainder of the family's current quarterly cap period. (3) An individual may request a reassessment of their family aggregate limit if they have a change in circumstances of if they are being terminated for failure to pay a premium.
(f) Notice of change in premium amount	An individual will be notified as provided in § 67.00 each time a premium amount is recalculated based on a reported change, whether or not the recalculation results in a change in the premium amount. In other cases (e.g., periodic system-generated recalculations), the individual will be notified only in cases where there is a change in the premium amount.
(g) Prospective billing and payment[91]	(1) Premiums are billed, and payments are due, prior to the start of a coverage month. (2) Except as provided in paragraph (g)(3) of this subsection, an individual enrolled in a QHP may pay any applicable premium owed by such individual directly to the QHP issuer. (3) If an individual owes premiums for public and private coverage, they must: (i) Pay all such premiums in a combined payment transaction directly to AHS; or (ii) Pay such premiums due for public coverage directly to AHS in one transaction and such premiums due for private coverage in a separate transaction directly to the QHP issuer.
(h) Conditions of eligibility and enrollment	Timely payment is required as a condition of initial and ongoing eligibility for, and enrollment in, premium-based coverage.
(i) No partial payments	A full month's premium must be paid for coverage for all or a part of a month.
(j) Premiums are nonrefundable	Except as specified in §§ 64.11 and 64.12, premium payments are nonrefundable.

[90] 42 CFR § 447.56(f) (NPRM, 78 FR 4593).

[91] 45 CFR § 155.240(a).

(k) Payment priority	Payments will always be applied first to satisfy any past-due premium balances.
64.02 Enrollee and public-notice requirements for Medicaid[92] (10/01/2013, 13-12F)	
(a) Schedule of Medicaid premiums and cost-sharing requirements	A public schedule will be available describing current Medicaid premiums and cost-sharing requirements containing the following information: (1) The group or groups of individuals who are subject to premiums and cost-sharing requirements and the current amounts; (2) Mechanisms for making payments for required premiums and cost-sharing charges; (3) The consequences for an individual who does not pay a premium or cost-sharing charge; (4) A list of hospitals charging cost sharing for non-emergency use of the emergency department; and (5) A list of preferred drugs or a mechanism to access such a list, including the state's health-benefits website.
(b) Schedule availability	The public schedule will be available to the following in a manner that ensures that affected individuals and providers are likely to have access to the notice: (1) Enrollees, at the time of their enrollment and reenrollment after a redetermination of eligibility, and when premiums, cost-sharing charges or aggregate limits are revised, notice to enrollees will be in accordance with § 5.01(d); (2) Applicants, at the time of application; (3) All participating providers; and (4) The general public.
(c) Notice of intent to establish or substantially modify premiums	Before AHS submits to CMS for approval a state plan amendment (SPA) to establish or substantially modify existing premiums, or change the consequences for non-payment, the public will be provided with advance notice of the SPA, specifying the amount of premiums and who is subject to the charges. A reasonable opportunity to comment on such SPAs will be provided. Documentation will be submitted with the SPA to demonstrate that these requirements were met.
64.03 [Reserved] (10/01/2013, 13-12F)	

[92] 42 CFR § 447.57.

64.04 Ongoing premium billing and payment (10/01/2013, 13-12F)	
	(a) After enrollment, a monthly bill for ongoing premiums will be sent by the 5th day of the month immediately preceding the month for which the premium covers. Payment is due on or before the last day of the month in which the bill is sent. For example, a premium bill for coverage in July 2014 will be sent by June 5, 2014. Payment of the premium will be due on or before June 30, 2014. (b) If the full premium payment is received by the premium payment due date, coverage will continue without further notice.
64.05 Partial payment (10/01/2013, 13-12F)	
(a) Single-premium household	Full monthly premium payments are required to maintain coverage and eligibility. A payment of less than the full amount due will be considered nonpayment.
(b) Multiple-premium household	
(1) Basic rule	(i) Except as provided in (b)(2) of this subsection, when a payment covers at least one, but fewer than all, of the household premiums due, the payment will be allocated by AHS in the following order: (A) Past-due Medicaid premium balances. (B) Dr. Dynasaur. (C) VPharm. (D) QHP. (ii) Coverage will only continue for those for whom the full premium due has been received.
(2) Exception	Partial payments will always be allocated, first, to cover past-due premium balances. An individual who wishes to specify a different payment allocation for the remaining premiums due may do so by calling Member Services at the number listed on the bill. The individual must make such a request prior to the time the payment is received by AHS.
64.06 Late payment (10/01/2013, 13-12F)	
(a) QHP with APTC and Dr. Dynasaur	
(1) Grace period	(i) An individual enrolled in a QHP with APTC or in Dr. Dynasaur is entitled to a premium grace period as described in this paragraph (a)(1)(i) if the individual has previously paid at least one full month's

	premium during the benefit year. (A) For an individual enrolled in a QHP with APTC, the grace period is three consecutive months. (B) For an individual enrolled in Dr. Dynasaur, the grace period is one month. (ii) During the grace period for an individual enrolled in a QHP with APTC, the QHP issuer: (A) Will pay all appropriate claims for services rendered to the individual during the first month of the grace period; and (B) May pend claims for services rendered to the individual in the second and third months of the grace period. (iii) During the grace period for an individual enrolled in Dr. Dynasaur, Medicaid will pay all appropriate claims for services rendered to the individual.
(2) Notice of premium nonpayment	(i) In the case of an individual enrolled in a QHP with APTC, if the full premium payment is not received on or before the premium due date: (A) The QHP issuer will notify the individual of: (I) The payment delinquency; (II) The grace period and the consequences of being in that status; and (III) The actions the individual must take to resume good standing; and the consequences of exhausting the grace period without paying all outstanding premiums. (B) The QHP issuer will also notify: (I) HHS of the nonpayment; and (II) Providers of the possibility for denied claims when an enrollee is in the second and third months of the grace period. (C) The individual will be notified of the effect of premium nonpayment on their eligibility for APTC and CSR, and their eligibility for future enrollment in a QHP. (ii) In the case of an individual enrolled in Dr. Dynasaur: (A) If the full premium payment is not received on or before the premium due date, the individual will be sent a payment reminder. The reminder will also advise the individual of the Dr. Dynasaur disenrollment protection as provided under § 64.07. (B) If a full premium payment is not received before the fifth business day of the grace period, a notice will be sent advising that the

	individual is in a grace period status. The notice will advise the individual: (I) Of the consequences of being in a grace status; (II) The actions the individual must take to resume good standing; and (III) The consequences of exhausting the grace period without paying all outstanding premiums. (C) At least 11 days before the end of the grace period, the individual will be sent a closure notice advising that enrollment will terminate at the end of the grace month.
(b) QHP without APTC	(1) In the case of an individual enrolled in a QHP without APTC, if the individual does not make a full premium payment by the premium due date, the QHP issuer will send a notice, advising that enrollment will end on the last day of the coverage month for failure to pay the premium. (2) The notice will also advise that: (i) The individual can avoid termination if their full premium is received on or before the last day of the coverage month; and (ii) If coverage is terminated for premium nonpayment, the individual will not be permitted to reenroll in a QHP until the next AOEP unless the individual qualifies for the exceptional-circumstances triggering event (§ 71.03(d)(9)).[93] (3) The individual will be notified of the effect of premium nonpayment on their eligibility for future enrollment in a QHP.
64.07 Dr. Dynasaur disenrollment protection[94] (10/01/2013, 13-12F)	
	(a) Prior to closure, an individual enrolled in Dr. Dynasaur who has received a nonpayment closure notice may contact AHS to show that, due to changed household circumstances, the individual is eligible for nonpremium-based coverage or a lower premium amount. (b) If the showing indicates that the individual is eligible for nonpremium-based coverage, AHS will reinstate and reenroll the individual and waive the past-

[93] In general, individuals terminated for nonpayment of premium are not eligible for special enrollment periods provided to those experiencing a loss of MEC. 45 CFR § 155.420(e)(1). However, 45 CFR § 155.420(d)(9) affords a special-enrollment triggering event in the case of "exceptional circumstances."

[94] 42 CFR § 457.570(b) provides CHIP enrollees an opportunity to show that their income has declined before coverage is terminated for non-payment of premium. In the interest of program alignment and administrative simplicity, Vermont has elected to extend this protection to all of the state's premium-based Dr. Dynasaur coverage groups.

	due premium. (c) If the showing indicates that the individual is eligible for premium-based coverage, but at a lower premium amount, any outstanding premium amounts due will be adjusted. If the enrollee pays the adjusted premium amount prior to closure, AHS will reinstate and reenroll the individual.
64.08 Reapplication for Medicaid in households with outstanding premium balances (10/01/2013, 13-12F)	
(a) Payment of past-due Medicaid premiums	When any individual in a household applies for health benefits and the household has an outstanding premium balance due to an unpaid Medicaid grace period, the individual will only be enrolled if: (1) Past due premiums and the first premium of the new coverage period are paid in full, or (2) All members of the household are eligible for nonpremium-based coverage.
(b) Waiver of past-due Medicaid premiums	Outstanding grace-period premium balances that are older than12 months will be waived.
64.09 Medical incapacity for VPharm (10/01/2013, 13-12F)	
	(a) "Medical incapacity" means a serious physical or mental infirmity to the health of an individual enrolled in VPharm (§ 10.01) that prevented the individual from paying the premium timely, as verified in a physician's certificate furnished to AHS. Notice by telephone or otherwise by the physician that such certificate will be forthcoming will have the effect of receipt, provided that the certificate is in fact received within seven days. (b) If an individual's VPharm coverage is terminated solely because of nonpayment of the premium, and the reason is medical incapacity as defined in (a) of this subsection, the individual's representative may request coverage for the period between the day coverage ended and the last day of the month in which they requested coverage. AHS will provide this coverage if it has received verification of medical incapacity and all premiums due for the period of non-coverage. The individual is responsible for all bills incurred during the period of non-coverage until AHS receives the required verification and premium amounts due. (c) If the health condition related to this medical incapacity is expected to continue or recur, AHS will encourage the individual to sign up for automatic withdrawal of their premium or designate an authorized representative to receive and pay future premiums for as long as the anticipated duration of the condition.
64.10 Payment balances (10/01/2013, 13-12F)	

	Payment balances that result from partial payments or overpayments will remain on the household's premium account.
64.11 Refund of prospective premium payments (10/01/2013, 13-12F)	
(a) Basic rule	A paid premium will automatically be refunded when, prior to the commencement of the coverage month associated with the premium payment: (1) The individual's eligibility and enrollment is closed, or (2) The individual is approved for eligibility and enrollment in nonpremium-based coverage.
(b) Exception	A paid premium will not be refunded if, after the commencement of the coverage month associated with the premium payment, the individual is approved for nonpremium-based coverage that covers the month in question.
(c) Refund timing	[Reserved]
64.12 Other premium refunds and credits (10/01/2013, 13-12F)	
Payment balances at end of coverage	
(a) Basic rule	(1) Any payment balances left on account when coverage ends will be credited as follows: (i) If a household member is reinstated in premium-based coverage within 30 days of closure, the payment balance will be credited against any new premium owed. (ii) If no household member is reinstated in premium-based coverage within 30 days of closure, the payment balance will be refunded within 10 business days. (2) If household members are reinstated and all members receive nonpremium-based coverage, the payment balance will be refunded within 30 days of reinstatement.
(b) Exception	If application of the basic rule under paragraph (a) of this subsection presents a financial hardship, the household may request an expedited refund of the payment balance.
64.13 Appeal of premium amount (10/01/2013, 13-12F)	
	An individual who appeals the premium amount must pay the billed amount until the appeal is decided for coverage to continue. If the individual wins the appeal, any overpayments will be refunded.

65.00 Medicaid copayments (10/01/2013, 13-12F)	
65.01 In general (10/01/2013, 13-12F)	
	(a) Copayments from some Medicaid enrollees are required for certain services. Copayments will be deducted from the Medicaid payment for each service subject to copayment. § 1916(c) of the Act requires that "no provider participating under the State (Medicaid) plan may deny care of services to an individual eligible for (Medicaid) . . . on account of such individual's inability to pay (the copayment)." This subsection further provides, however, that these requirements "shall not extinguish the liability of the individual to whom the care or services were furnished for the payment of (the copayment)." (b) The state is not responsible for copayments that a provider may collect in error or that an individual makes on a service that is not paid for by Medicaid.
65.02 Enrollees not subject to copayments (10/01/2013, 13-12F)	
	Copayments are never required from individuals who are: (a) Enrolled in MABD for long-term care services; (b) MABD enrollees under age 18; (c) MCA enrollees under age 21; or (d) MCA enrollees who are pregnant or in the 60-day post-pregnancy period.
65.03 Services that require copayments (10/01/2013, 13-12F)	
	See DVHA Rule 7101(C) and (E) for the services that require co-payments and the required amounts.
66.00 Presumptive Medicaid eligibility determined by hospitals[95] (10/01/2013, 13-12F)	
66.01 Basis (10/01/2013, 13-12F)	
	This section implements § 1902(a)(47)(B) of the Act.
66.02 In general (10/01/2013, 13-12F)	
(a) Basic rule	Medicaid will be provided during a presumptive eligibility period to an individual who is determined by a qualified hospital, on the basis of preliminary information, to be presumptively eligible in accordance with the policies and procedures

[95] 42 CFR § 435.1110 (NPRM, 78 FR 4593).

	established by AHS consistent with this section.
(b) Qualified hospital	A qualified hospital is: (1) A hospital that: (i) Participates as a Medicaid provider; (ii) Notifies AHS of its election to make presumptive eligibility determinations under this section; and (iii) Agrees to make presumptive eligibility determinations consistent with state policies and procedures; (2) Assists individuals in completing and submitting the full application and understanding any documentation requirements; and (3) Has not been disqualified by AHS in accordance with paragraph (d) of this subsection.
(c) Scope of authority to make determinations of presumptive eligibility	Hospitals may only make determinations of presumptive eligibility under this section based on income for (1) children under § 7.03(a)(3); (2) pregnant women under § 7.03(a)(2); (3) parents and caretaker relatives under § 7.03(a)(1), and (4) adults under § 7.03(a)(5).
(d) Disqualification of hospitals	(1) AHS may establish standards for qualified hospitals related to the proportion of individuals determined presumptively eligible for Medicaid by the hospital who: (i) Submit a regular application before the end of the presumptive eligibility period; or (ii) Are determined eligible for Medicaid based on such application. (2) AHS will take action, including, but not limited to, disqualification of a hospital as a qualified hospital under this section, if it determines that the hospital is not: (i) Making, or is not capable of making, presumptive eligibility determinations in accordance with applicable state policies and procedures; or (ii) Meeting the standard or standards established under paragraph (d)(1) of this section.
66.03 Procedures (10/01/2013, 13-12F)	

(a) In general[96]	AHS will provide Medicaid services to an individual during the presumptive-eligibility period that follows a determination by a qualified hospital that, on the basis of preliminary information, the individual has gross income determined using simplified methods prescribed by the state, at or below the Medicaid income standard established for the individual.
(b) AHS's responsibilities[97]	AHS will: (1) Provide qualified hospitals with application forms for Medicaid and information on how to assist individuals in completing and filing such forms; (2) Establish oversight mechanisms to ensure that presumptive-eligibility determinations are being made consistent with applicable laws and rules; and (3) Allow determinations of presumptive eligibility to be made by qualified hospitals on a statewide basis.
(c) Qualified hospital's responsibilities[98]	(1) Upon receipt of a signed and dated application for health benefits, a qualified hospital must determine whether the individual is presumptively eligible under this rule. (2) For the purpose of the presumptive eligibility determination, a qualified hospital must accept self-declaration of the presumptive-eligibility criteria. (3) If the individual is presumptively eligible, a qualified hospital must: (i) Approve presumptive coverage for the individual; (ii) Notify the individual within twenty-four hours of the eligibility determination, in writing or orally, if appropriate: (A) That the individual is eligible for presumptive coverage; (B) The presumptive eligibility determination date; (C) That the individual is required to make application for ongoing Medicaid by not later than the last day of the following month; and (D) That failure to cooperate with the standard eligibility determination process will result in denial of ongoing Medicaid and termination of presumptive coverage on the date described in § 66.04; (iii) Notify AHS of the presumptive eligibility determination within five

[96] 42 CFR § 435.1102(a) (NPRM, 78 FR 4593).

[97] 42 CFR § 435.1102(b) (NPRM, 78 FR 4593).

[98] 42 CFR § 435.1102(b)(2) (NPRM, 78 FR 4593), as applied to hospital determination of presumptive eligibility by 42 CFR § 435.1110(a).

	working days after the date on which determination is made; (iv) Provide the individual with a Medicaid application form; (v) Advise the individual that: (A) If a Medicaid application on behalf of the individual is not filed by the last day of the following month, the individual's presumptive eligibility will end on that last day; and (B) If a Medicaid application on behalf of the individual is filed by the last day of the following month, the individual's presumptive eligibility will end on the day that a decision is made on the Medicaid application; and (vi) Take all reasonable steps to help the individual complete an application for ongoing Medicaid or make contact with AHS. (4) If the individual is not presumptively eligible, a qualified hospital must notify the individual at the time the determination is made, in writing and orally if appropriate: (i) Of the reason for the determination; (ii) That their ineligibility for presumptive coverage does not necessarily mean that they are ineligible for other categories of Medicaid; and (iii) That the individual may file an application for Medicaid with AHS, and that, if they do so, that the individual's eligibility for other categories of Medicaid will be reviewed. (5) A qualified hospital may not delegate the authority to determine presumptive eligibility to another entity.[99]
(d) Required attestations[100]	For purposes of making a presumptive eligibility determination under this section, an individual (or another person having reasonable knowledge of the individual's status) must attest to the individual being a: (1) Citizen or national of the United States or in satisfactory immigration status; and (2) Resident of the state.

[99] 42 CFR § 435.1102(b) (NPRM, 78 FR 4593), as applied to hospital determination of presumptive eligibility by 42 CFR § 435.1110(a).

[100] 42 CFR § 435.1102(d)(1) (NPRM, 78 FR 4593), as applied to hospital determination of presumptive eligibility by 42 CFR § 435.1110(a).

(e) Limitation on other conditions[101]	(1) The conditions specified in this subsection are the only conditions that apply in the case of a presumptive-eligibility determination. (2) Verification of the conditions that apply for presumptive eligibility is not required.
66.04 Presumptive coverage[102](10/01/2013, 13-12F)	
(a) Effective dates	(1) Presumptive coverage begins on the date the individual is determined to be presumptively eligible. (2) Presumptive coverage ends with the earlier of (and includes): (i) The date that the individual is determined to be eligible or ineligible for ongoing Medicaid. (ii) If the individual has not applied for ongoing Medicaid, the last day of the month following the month in which the individual was determined to be presumptively eligible.
(b) No retroactive coverage	No retroactive coverage may be provided as a result of a presumptive eligibility determination.
(c) Frequency	An individual will only receive one presumptive Medicaid eligibility period for each hospital admission.
66.05 Notice and fair hearing rules[103] (10/01/2013, 13-12F)	
	Notice and fair hearing regulations in §§ 68.00 and 80.00 do not apply to determinations of presumptive eligibility under this section.
67.00 General notice standards[104] (10/01/2013, 13-12F)	
(a) General requirement	Any notice required to be sent by AHS must be written and include: (1) An explanation of the action reflected in the notice, including the effective date of the action.

[101] 42 CFR § 435.1102(d)(2) (NPRM, 78 FR 4593), as applied to hospital determination of presumptive eligibility by 42 CFR § 435.1110(a).

[102] 42 CFR § 435.1101 (NPRM, 78 FR 4593), as applied to hospital determination of presumptive eligibility by 42 CFR § 435.1110(a).

[103] 42 CFR § 435.1102(e) (NPRM, 78 FR 4593), as applied to hospital determination of presumptive eligibility by 42 CFR § 435.1110(a).

[104] 45 CFR § 155.230 (NPRM, 78 FR 4593).

	(2) Any factual findings relevant to the action. (3) Citations to, or identification of, the relevant regulations supporting the action. (4) Contact information for available customer service resources. (5) An explanation of appeal rights, if applicable.
(b) Accessibility and readability	All applications, forms, and notices, including the single, streamlined application and notice of redetermination, will conform to the standards outlined in § 5.01(c).
67.01 Use of electronic notices[105] (10/01/2013, 13-12F)	
(a) Choice of notice format	An individual will be provided with a choice to receive notices and information required under these rules in electronic format or by regular mail. If the individual elects to receive communications electronically, AHS will: (1) Confirm by regular mail the individual's election to receive notices electronically; (2) Inform the individual of their right to change such election, at any time, to receive notices through regular mail; (3) Post notices to the individual's electronic account within one business day of notice generation; (4) Send an email or other electronic communication alerting the individual that a notice has been posted to his or her account. Confidential information will not be included in the email or electronic alert; (5) If an electronic communication is undeliverable, send any notice by regular mail within three business days of the date of the failed electronic communication; and (6) At the individual's request, provide through regular mail any notice posted to the individual's electronic account.
(b) Limitation on use of electronic notices and other communications	Notice or other communications will be provided electronically only if the individual: (1) Has affirmatively elected to receive electronic communications in accordance with paragraph (a) of this subsection; and (2) Is permitted to change such election at any time.
68.00 Notice of decision and appeal rights(10/01/2013, 13-12F)	

[105] 42 CFR § 435.918 (NPRM, 78 FR 4593); 45 CFR § 155.230 (NPRM, 78 FR 4593).

68.01 Definitions (10/01/2013, 13-12F)	
Action[106]	An AHS decision that results in termination, suspension, denial or reduction of eligibility or a reduction in the level of benefits and services, including a determination of the amount of medical expenses which must be incurred to establish income eligibility in accordance with § 7.03(a)(8) or § 8.06, or a determination of income for the purposes of imposing any premiums or cost-sharing.
68.02 Notice of decision concerning eligibility[107] (10/01/2013, 13-12F)	
(a) In general	AHS will send to an individual notice of any decision affecting their eligibility, including a denial, termination or suspension of eligibility in accordance with federal and state laws.
(b) Timing of notification	Notice will be provided: (1) At the time that the individual applies for health benefits; or (2) At the time eligibility or services are denied, or other action is taken affecting the individual's eligibility.
68.03 Advance notice of decision[108] (10/01/2013, 13-12F)	
(a) In general	A notice will be sent at least 11 days before the date of action, except as permitted under paragraph (b) of this subsection.
(b) Exception[109]	A notice may be sent not later than the date of action if: (1) There is factual information confirming the death of an enrollee; (2) A clear written statement signed by an enrollee is received that: (i) The enrollee no longer wishes eligibility; or (ii) Gives information that requires termination or reduction of eligibility and indicates that the enrollee understands that this must be the result of supplying that information; (3) The enrollee has been admitted to an institution where they are ineligible;

[106] 42 CFR § 431.201 (NPRM, 78 FR 4593)

[107] 42 CFR § 435.919 (NPRM, 78 FR 4593); 45 CFR §§ 155.310(g) and 155.355.

[108] 42 CFR § 435.211 (NPRM, 78 FR 4593).

[109] 42 CFR § 431.213 (NPRM, 78 FR 4593).

	(4) The enrollee's whereabouts are unknown and the post office returns mail directed to the enrollee indicating no forwarding address; or (5) AHS establishes the fact that the enrollee has been accepted for Medicaid eligibility by another state, territory, or commonwealth.
(c) Exception: probable fraud[110]	The period of advance notice may be shortened to 5 days before the date of action if: (1) There are facts indicating that action should be taken because of probable fraud by the enrollee; and (2) The facts have been verified, if possible, through secondary sources.
69.00 Corrective action[111] (10/01/2013, 13-12F)	
	Corrective payments will be promptly made, retroactive to the date an incorrect action was taken if: (a) The hearing decision is favorable to the individual; or (b) The issue is decided in the individual's favor before the hearing.
70.00 Medicaid enrollment (10/01/2013, 13-12F)	
70.01 Nonpremium-based coverage (10/01/2013, 13-12F)	
(a) Prospective enrollment	An approved individual will be enrolled on the first day of the application month.
(b) Retroactive eligibility[112]	(1) Retroactive eligibility is effective no earlier than the first day of the third month before the month of request if the following conditions are met: (i) Eligibility is determined and a budget computed separately for each of the three months; (ii) A medical need exists; and (iii) Elements of eligibility were met at some time during each month. (2) An individual may be eligible for the retroactive period (or any single month(s) of the retroactive period) even though ineligible for the prospective period. Six months continuous eligibility may begin in a

[110] 42 CFR § 431.214.

[111] 42 CFR § 431.246.

[112] Section 1902(a)(34) of the Act.

	retroactive month; in that case, no further budgets are required. (3) If an individual, at the time of application, declares that they incurred medical expenses during the retroactive period and eligibility is not approved, the case record must contain documentation of the reason the individual was not eligible in one or more months of the retroactive period.
(c) Pregnant woman	The Medicaid effective date for an otherwise eligible pregnant woman can be determined up to three months before the request for Medicaid, as long as the pregnancy is medically verified to have existed at the beginning of this retroactive period. If the physician or licensed medical professional verifies that the woman was pregnant during one or more of the three months before the month of request, application for retroactive Medicaid eligibility may be approved for the month(s) in which all other criteria were met and medical expenses were incurred. Eligibility for each month is determined individually.
70.02 Premium-based coverage; conditional enrollment and initial billing (10/01/2013, 13-12F)	
(a) Conditional enrollment	An individual who is approved for premium-based coverage, will be conditionally-enrolled, pending payment of the initial premium.
(b) Initial billing	The conditionally-enrolled individual will be notified of the premium obligation and premium amount in a bill that will be sent at the time of approval and conditional enrollment. The bill will include payment instructions.
(c) Initial bill amount	(1) The initial bill will include premium charges for the initial coverage month. (2) If the initial coverage month is the month in which the individual applied for health benefits, the initial bill will include premium charges for the application month, the approval month (if different from the application month), and the month following the approval month. (3) If the individual is eligible for, and requests retroactive coverage, the initial bill will include premium charges for each month of retroactive coverage.
(d) Payment allocation	Unless the individual specifies otherwise, when the initial payment covers the premiums due for at least one, but fewer than all, of the months included in the initial bill, the payment will be allocated in the following reverse-chronological order: (1) The month following the approval month; (2) The approval month; (3) The application month; and (4) Retroactive coverage months.

70.03 Coverage islands; premiums paid after enrollment (10/01/2013, 13-12F)	
	(a) Individuals who initially pay the premiums due for fewer than all of the months included in the initial bill may subsequently obtain coverage islands for any or all of the remaining months (a "coverage island" is a period of eligibility with specific beginning and end dates). (b) To obtain one or more such coverage islands, the individual must pay the full premium amount that was initially billed for each of the desired months of coverage. (c) Payments for coverage islands will be allocated in the order specified in § 64.05(b).
71.00 Enrollment of qualified individuals in QHPs[113](10/01/2013, 13-12F)	
71.01 In general(10/01/2013, 13-12F)	
(a) General requirements[114]	AHS will accept a QHP selection from an individual who is determined eligible for enrollment in a QHP in accordance with § 11.00, and will: (1) Notify the issuer of the individual's selected QHP; and (2) Transmit information necessary to enable the QHP issuer to enroll the individual.
(b) Timing of data exchange[115]	AHS will: (1) Send eligibility and enrollment information to QHP issuers and HHS promptly and without undue delay; (2) Establish a process by which a QHP issuer acknowledges the receipt of such information; and (3) Send updated eligibility and enrollment information to HHS promptly and without undue delay, in a manner and timeframe specified by HHS.
(c) Records[116]	Records of all enrollments in QHPs will be maintained.

[113] 45 CFR § 155.400.

[114] 45 CFR § 155.400(a).

[115] 45 CFR § 155.400(b).

[116] 45 CFR § 155.400(c).

(d) Reconcile files[117]	AHS will reconcile enrollment information with QHP issuers and HHS no less than on a monthly basis.
71.02 Initial and annual open enrollment periods[118](10/01/2013, 13-12F)	
(a) General requirements[119]	(1) An initial open enrollment period (IOEP) and annual open enrollment periods (AOEPs) will be provided consistent with this subsection, during which qualified individuals may enroll in a QHP and enrollees may change QHPs. (2) A qualified individual may only be permitted to enroll in a QHP or an enrollee to change QHPs during the IOEP specified in paragraph (b) of this subsection, the AOEP specified in paragraph (e) of this subsection, or a special enrollment period (SEP) described in § 71.03 for which the qualified individual has been determined eligible.
(b) IOEP[120]	The IOEP begins October 1, 2013 and extends through March 31, 2014.
(c) Effective coverage dates for IOEP[121]	
(1) Regular effective dates	For a QHP selection received from a qualified individual: (i) On or before December 15, 2013, the coverage effective date will be January 1, 2014; (ii) Between the first and fifteenth day of any subsequent month during the IOEP, the coverage effective date will be the first day of the following month; and (iii) Between the sixteenth and last day of the month for any month between December 2013 and March 31, 2014, the coverage effective date will be the first day of the second following month.
(2) Option for earlier effective dates	Subject to demonstrating to HHS that all of the participating QHP issuers agree to effectuate coverage in a timeframe shorter than discussed in paragraphs (c)(1)(ii) and (iii) of this subsection, one or both of the following may be done for all applicable individuals: (i) For a QHP selection received from a qualified individual in accordance

[117] 45 CFR § 155.400(d).

[118] 45 CFR § 155.410.

[119] 45 CFR § 155.410(a).

[120] 45 CFR § 155.410(b).

[121] 45 CFR § 155.410(c).

	with the dates specified in paragraphs(c)(1)(ii) or (iii) of this subsection, a coverage effective date may be provided for a qualified individual earlier than specified in such paragraphs, provided that either: (A) The qualified individual has not been determined eligible for APTC or CSR; or (B) The qualified individual pays the entire premium for the first partial month of coverage as well as all cost sharing, thereby waiving the benefit of APTC and CSR payments until the first of the next month. (ii) For a QHP selection received from a qualified individual on a date set by the state after the fifteenth of the month for any month between December 2013 and March 31, 2014, a coverage effective date of the first of the following month may be provided.
(d) Notice of AOEP[122]	Starting in 2014, AHS will provide a written AOEP notification to each enrollee no earlier than September 1, and no later than September 30.
(e) AOEP[123]	For benefit years beginning on or after January 1, 2015, the AOEP begins October 15 and extends through December 7 of the preceding calendar year.
(f) Effective date for coverage after the AOEP[124]	Coverage will be effective as of the first day of the following benefit year for a qualified individual who has made a QHP selection during the AOEP.
71.03 Special enrollment periods (SEP)[125] (10/01/2013, 13-12F)	
(a) General requirements[126]	(1) AHS will provide SEP consistent with this subsection, during which qualified individuals may enroll in QHPs and enrollees may change QHPs. (2) For the purpose of this subsection, "dependent" has the same meaning as it does in 26 CFR § 54.9801-2, referring to any individual who is or who may become eligible for coverage under the terms of a QHP because of a relationship to a qualified individual or enrollee.

[122] 45 CFR § 155.410(d).

[123] 45 CFR § 155.410(e).

[124] 45 CFR § 155.410(f).

[125] 45 CFR § 155.420.

[126] 45 CFR § 155.420.

(b) Effective dates[127]	
(1) Regular effective dates	Except as specified in paragraphs (b)(2) and (3) of this subsection, for a QHP selection received by AHS from a qualified individual: (i) Between the first and the fifteenth day of any month, the coverage effective date will be the first day of the following month; and (ii) Between the sixteenth and the last day of any month, the coverage effective date will be the first day of the second following month.
(2) Special effective dates	(i) In the case of birth, adoption, or placement for adoption, coverage is effective for a qualified individual or enrollee on the date of birth, adoption, or placement for adoption. (ii) In the case of marriage, or in the case where a qualified individual loses MEC, as described in paragraph (d)(1) of this subsection, coverage is effective for a qualified individual or enrollee on the first day of the following month. (iii) In the case of a qualified individual or enrollee eligible for a special enrollment period as described in paragraphs (d)(4), (d)(5), or (d)(9) of this subsection, coverage is effective on an appropriate date based on the circumstances of the special enrollment period, in accordance with guidelines issued by HHS. Such date must be either: (A) The date of the event that triggered the special enrollment period under (d)(4), (d)(5), or (d)(9) of this subsection; or (B) In accordance with the regular effective dates specified in paragraph (b)(1) of this subsection.
(3) Option for earlier effective dates	Subject to demonstration to HHS that all of the participating QHP issuers agree to effectuate coverage in a timeframe shorter than discussed in paragraph (b)(1) or (b)(2)(ii) of this subsection, one or both of the following may be done for all applicable individuals: (i) For a QHP selection received from a qualified individual in accordance with the dates specified in paragraph (b)(1) or (b)(2)(ii) of this section, a coverage effective date for a qualified individual may be provided earlier than specified in such paragraphs. (ii) For a QHP selection received from a qualified individual on a date set by the state after the fifteenth of the month, a coverage effective date of the first of the following month may be provided.
(4) APTC and CSR	Notwithstanding the standards of this subsection, APTC and CSR will adhere to

[127] 45 CFR § 155.420(b).

	the effective dates specified in § 74.04.
(c) Length of SEP[128]	Unless specifically stated otherwise herein, a qualified individual or enrollee has 60 days from the date of a triggering event to select a QHP.
(d) SEPs[129]	AHS will allow a qualified individual or enrollee, and, when specified below, their dependent, will be allowed to enroll in or change from one QHP to another if one of the following triggering events occur: (1) The qualified individual or their dependent loses MEC: (i) In the case of a QHP decertification, the triggering event is the date of the notice of decertification to all affected parties; or (ii) In all other cases, the triggering event is the date the individual or dependent loses eligibility for MEC; (2) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption or placement for adoption; (3) The qualified individual, who was not previously a citizen, national, or lawfully present individual gains such status; (4) The qualified individual's or their dependent's enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of AHS or HHS, or its instrumentalities as evaluated and determined by AHS. In such cases, AHS may take such action as may be necessary to correct or eliminate the effects of such error, misrepresentation, or inaction; (5) The enrollee or their dependent adequately demonstrates to AHS that the QHP in which they are enrolled substantially violated a material provision of its contract in relation to the enrollee; (6) *Newly eligible or ineligible for APTC, or change in eligibility for CSR.* (i) The enrollee is determined newly eligible or newly ineligible for APTC or has a change in eligibility for CSR; (ii) The enrollee's dependent enrolled in the same QHP is determined newly eligible or newly ineligible for APTC or has a change in eligibility for CSR; or (iii) A qualified individual or their dependent who is enrolled in qualifying coverage in an eligible employer-sponsored plan is determined newly eligible for APTC based in part on a finding that such individual will

[128] 45 CFR § 155.420(c).

[129] 45 CFR § 155.420(d).

	cease to be eligible for qualifying coverage in an eligible-employer sponsored plan in the next 60 days and is allowed to terminate existing coverage. An individual whose existing coverage through an eligible employer-sponsored plan will no longer be affordable or provide minimum value will be permitted to access this special enrollment period prior to the end of their coverage through such eligible employer-sponsored plan, although they are not eligible for APTC until the end of their coverage through such eligible employer-sponsored plan; (7) The qualified individual or enrollee, or their dependent, gains access to new QHPs as a result of a permanent move; (8) The qualified individual who is an Indian, as defined by § 4 of the Indian Health Care Improvement Act, may enroll in a QHP or change from one QHP to another one time per month; (9) The qualified individual or enrollee, or their dependent, demonstrates to AHS, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances, including : (i) An individual's enrollment or non-enrollment in a QHP was unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of navigators, agents or brokers, as evaluated and determined by VHC. In such cases, VHC may trigger the SEP and take such action as may be necessary to correct or eliminate the effects of such error, misrepresentation, or inaction, and (ii) An individual missing the individual open enrollment period while waiting for their employer to be determined eligible. Under this scenario, an individual's employer is ultimately denied, or fails to pay premiums in order to effectuate coverage on behalf of their employees; and (10) The qualified individual or their dependent is enrolled in an eligible employer-sponsored plan that is not qualifying coverage in an eligible employer-sponsored plan, as the term is defined in § 3.00, and is allowed to terminate existing coverage. Such an individual will be permitted to access this special enrollment period 60 days prior to the end of their coverage through such eligible employer-sponsored plan.
(e) Loss of MEC[130]	(1) Loss of MEC includes dropping of COBRA coverage as long as the qualified individual is otherwise newly eligible for APTC. (2) Loss of MEC does not include: (i) Loss due to failure to pay premiums on a timely basis, including

[130] 45 CFR § 155.420(e); 26 CFR § 54.9801-6(a)(3)(i) through (iii).

	COBRA premiums prior to expiration of COBRA coverage; or (ii) Termination of an individual's coverage for cause (which could include, but not be limited to, termination because of an action by the individual that constituted fraud or because the individual made an intentional misrepresentative of a material fact).
72.00 Duration of eligibility determinations without enrollment[131] (10/01/2013, 13-12F)	
	To the extent that an individual who is determined eligible for enrollment in a QHP does not select a QHP within their enrollment period, or is not eligible for an enrollment period, in accordance with § 71.00, and seeks a new enrollment period prior to the date on which their eligibility is redetermined in accordance with § 75.00 (annual redetermination),the individual will be required to attest as to whether information affecting their eligibility has changed since their most recent eligibility determination before determining their eligibility for a special enrollment period, and must process any changes reported in accordance with the procedures specified in § 73.00 (mid-year redetermination).
73.00 Eligibility redetermination during a benefit year[132] (10/01/2013, 13-12F)	
73.01 General requirement (10/01/2013, 13-12F)	
	AHS must redetermine the eligibility of an individual in a health-benefits program during the benefit year if it receives and verifies new information reported by the individual or identifies updated information through the data matching described in § 74.00.
73.02 Verification of reported changes (10/01/2013, 13-12F)	
(a) In general[133]	AHS will: (1) Verify any information reported by an individual in accordance with the processes specified in §§ 53.00 through 56.00 prior to using such information in an eligibility redetermination; and (2) Provide periodic electronic notifications regarding the requirements for reporting changes and an individual's opportunity to report any changes as described in § 4.03(b), to an individual who has elected to receive electronic notifications, unless the individual has declined to receive notifications under this paragraph (a)(2).
(b) Limitation on verification when redetermining	For renewals of Medicaid enrollees whose financial eligibility is determined using MAGI-based income, any requests for additional information from the individual

[131] 45 CFR § 155.310(j) (NPRM, 78 FR 4593).

[132] 42 CFR § 435.916(d); 45 CFR § 155.330.

[133] 42 CFR § 435.916(d); 45 CFR § 155.330(c).

eligibility based on a reported change[134]	will be limited to information relating to such change in circumstance.
73.03 Reestablishment of annual renewal date[135] (10/01/2013, 13-12F)	
	If a redetermination is made during a benefit year and there is enough information available to renew eligibility with respect to all eligibility criteria, a new 12-month renewal period may begin.
74.00 Periodic examination of data sources[136] (10/01/2013, 13-12F)	
74.01 In general (10/01/2013, 13-12F)	
	Available data sources described in § 56.01 will be examined to identify the following changes: (a) Death; and (b) For an individual on whose behalf APTC or CSR are being provided, eligibility for Medicare.
74.02 Flexibility[137] (10/01/2013, 13-12F)	
	Additional efforts may be made to identify and act on changes that may affect an individual's eligibility for enrollment in a health-benefits program, provided that such efforts: (a) Would reduce the administrative costs and burdens on individuals while maintaining accuracy and minimizing delay, and that applicable requirements with respect to the confidentiality, disclosure, maintenance, or use of such information will be met; and (b) Comply with the standards specified in § 74.03(b).
74.03 Redetermination and notification of eligibility[138] (10/01/2013, 13-12F)	

[134] 42 CFR § 435.916(d)(1)(i).

[135] 42 CFR § 435.916(d)(1)(ii).

[136] 45 CFR § 155.330(d)(1).

[137] 45 CFR § 155.330(d)(2).

[138] 45 CFR § 155.330(e).

(a) Enrollee-reported data[139]	If AHS verifies updated information reported by an individual, AHS will: (1) Redetermine the individual's eligibility in accordance with the standards specified in § 58.00; (2) Notify the individual regarding the determination in accordance with the requirements specified in § 61.00; and (3) Notify the individual's employer, as applicable.
(b) Data matching[140]	(1) If AHS identifies updated information regarding death, in accordance with § 74.01, or regarding any factor of eligibility not regarding income, family size, or family composition, AHS will: (i) Notify the individual regarding the updated information, as well as the individual's projected eligibility determination after considering such information; (ii) Allow the individual 30 days from the date of the notice to notify AHS that such information is inaccurate; and (iii) If the individual responds contesting the updated information, proceed in accordance with § 57.00 (inconsistencies). (iv) If the individual does not respond within the 30-day period, proceed in accordance with paragraphs (a)(1) and (2) of this subsection. (2) If AHS identifies updated information regarding income, family size or family composition, with the exception of information regarding death, AHS will: (i) Follow procedures described in paragraphs (b)(1)(i) and (ii) of this subsection; and (ii) If the individual responds confirming the updated information, proceed in accordance with paragraphs (a)(1) and (2) of this subsection. (iii) If the individual does not respond within the 30-day period: (A) If the individual is enrolled in a QHP with or without APTC or CSR, maintain the individual's existing eligibility determination without considering the updated information. (B) If the individual is enrolled in Medicaid, disenroll the individual. However, if the individual subsequently submits the necessary information within 90 days after the date of disenrollment, AHS will reconsider the individual's eligibility without requiring a new

[139] 45 CFR § 155.330(e)(1).

[140] 45 CFR § 155.330(e)(2).

	application. (iv) If the individual provides more up-to-date information, proceed in accordance with § 73.02.
74.04 Effective dates[141] [Reserved] (10/01/2013, 13-12F)	
75.00 Eligibility renewal[142] (10/01/2013, 13-12F)	
75.01 In general (10/01/2013, 13-12F)	
(a) Renewal occurs annually	Except as specified in §§ 75.02(j) and (k), eligibility of an individual in a health-benefits program will be renewed on an annual basis.
(b) Updated income and family size information	In the case of an individual who requested an eligibility determination for government-sponsored health benefits (i.e., health benefits other than enrollment in a QHP without APTC or CSR), AHS will request updated tax return information, if the individual has authorized the request of such tax return information, data regarding Social Security benefits, and data regarding MAGI-based income (as described in § 56.01) for use in the individual's eligibility renewal.
75.02 Renewal procedures for QHP enrollment (10/01/2013, 13-12F)	
(a) Notice to enrollee[143]	AHS will provide an annual renewal notice to an individual, including the following: (1) The data obtained under paragraph § 75.01(b), if applicable; (2) The data used in the individual's most recent eligibility determination; and (3) The individual's projected eligibility determination for the following year, after considering any updated information described in paragraph (a)(1) of this subsection, including, if applicable, the amount of any APTC and the level of any CSR or eligibility for Medicaid.
(b) Timing[144]	(1) For renewals under this section for coverage effective January 1, 2015, the notice provisions of paragraph (a) of this subsection and § 71.02(d) will be satisfied through a single, coordinated notice. (2) For renewals under this section for coverage effective on or after

[141] 45 CFR § 155.330(f) (NPRM, 78 FR 4593).

[142] 42 CFR § 435.916(a) and (b); 45 CFR § 155.335 (NPRM, 78 FR 4593).

[143] 45 CFR § 155.335(c) (NPRM, 78 FR 4593).

[144] 45 CFR § 155.335(d).

	January 1, 2017, the notice specified in paragraph (a) of this subsection may be sent separately from the notice of annual open enrollment specified in § 71.02(d), provided that: (i) The notice specified in paragraph (a) of this subsection is sent no earlier than the date of the notice of annual open enrollment specified in § 71.02(d); and (ii) The timing of the notice specified in paragraph (a) of this subsection allows a reasonable amount of time for the individual to review the notice, provide a timely response, and for any changes in coverage elected during the AOEP to be implemented.
(c) Changes reported by enrollees[145]	(1) An individual must report any changes with respect to the information listed in the notice described in paragraph (a) of this subsection within 30 days from the date of the notice. (2) An individual, or an application filer, on behalf of the individual, may report changes via the channels available for the submission of an application, as described in § 52.02(b).
(d) Verification of reported changes[146]	Any information reported by an individual under paragraph (c) of this subsection will be verified using the processes specified in §§ 53.00 through 56.00, including the relevant provisions in those subsections regarding inconsistencies, prior to using such information to determine eligibility.
(e) Response to redetermination notice[147]	(1) An individual, or an application filer, on behalf of the individual, must sign and return the notice described in paragraph (a) of this subsection. (2) To the extent that an individual does not sign and return the notice described in paragraph (a) subsection within the 30-day period specified in paragraph (c) subsection, AHS will proceed in accordance with the procedures specified in paragraph (f)(1) of this subsection.
(f) Redetermination and notification of eligibility[148]	(1) After the 30-day period specified in paragraph (c) of this subsection has elapsed, AHS will: (i) Redetermine the individual's eligibility in accordance with the standards specified in § 11.00 using the information provided to the individual in the notice specified in paragraph (a), as supplemented with any information reported by the individual and verified by AHS in accordance with paragraphs (c) and (d) of this subsection;

[145] 45 CFR § 155.335(e) (NPRM, 78 FR 4593).

[146] 45 CFR § 155.335(f) (NPRM, 78 FR 4593).

[147] 45 CFR § 155.335(g) (NPRM, 78 FR 4593).

[148] 45 CFR § 155.335(h) (NPRM, 78 FR 4593).

	(ii) Notify the individual in accordance with the requirements specified in § 68.02; and (iii) Notify the individual's employer if the individual was found eligible for APTC because the employer does not offer affordable MEC. See § 49.02 for information on employer appeals of employee eligibility for APTC/CSR. (2) If an individual reports a change with respect to the information provided in the notice specified in paragraph (a) of this subsection that has not been verified as of the end of the 30-day period specified in paragraph (c) of this subsection, the individual's eligibility will be determined after completing verification, as specified in paragraph (d) of this subsection.
(g) Effective date of annual redetermination[149]	A determination under this section is effective on the first day of the coverage year following the year in which the notice in paragraph (a) of this subsection was provided, or in accordance with the rules specified in § 74.04 regarding effective dates, whichever is later.
(h) Renewal of coverage[150]	If an individual remains eligible for coverage in a QHP upon annual redetermination, such individual will remain in the QHP selected the previous year unless such individual terminates coverage from such plan, including termination of coverage in connection with enrollment in a different QHP, in accordance with § 76.00.
(i) Authorization of the release of tax data to support annual redetermination[151]	(1) AHS must have authorization from an individual in order to obtain updated tax return information described in § 75.01(b) for purposes of conducting an annual redetermination. (2) AHS is authorized to obtain the updated tax return information described in § 75.01(b) for a period of no more than five years based on a single authorization, provided that: (i) An individual may decline to authorize AHS to obtain updated tax return information; or (ii) An individual may authorize AHS to obtain updated tax return information for fewer than five years; and (iii) AHS must allow an individual to discontinue, change, or renew his or her authorization at any time.

[149] 45 CFR § 155.335(i) (NPRM, 78 FR 4593).

[150] 45 CFR § 155.335(j).

[151] 45 CFR § 155.335(k) (NPRM, 78 FR 4593).

(j) Limitation on redetermination[152]	To the extent that an individual has requested an eligibility determination for government-sponsored health-benefits programs in accordance with § 63.00 and AHS does not have an active authorization to obtain tax data as a part of the annual redetermination process, AHS will not proceed with a redetermination until such authorization has been obtained or the individual continues their request for an eligibility determination for government-sponsored health benefits programs in accordance with § 63.00.
(k) Special rule[153]	A qualified individual's eligibility will not be redetermined in accordance with this subsection if the qualified individual's eligibility was redetermined under this subsection during the prior year, and the qualified individual was not enrolled in a QHP at the time of such redetermination, and has not enrolled in a QHP since such redetermination.

75.03 Renewal procedures for Medicaid(10/01/2013, 13-12F)

(a) Renewal on basis of available information	(1) A redetermination of eligibility for Medicaid will be made without requiring information from the individual if AHS is able to do so based on reliable information contained in the individual's account or other more current information available, including but not limited to information accessed through any data bases. (2) If eligibility can be renewed based on such information, the individual will be notified: (i) Of the eligibility determination, and basis; and (ii) That the individual must inform AHS if any of the information contained in such notice is inaccurate, but that the individual is not required to sign and return such notice if all information provided on such notice is accurate.
(b) Eligibility renewal using pre-populated renewal form	If eligibility cannot be renewed in accordance with paragraph (a)(2) of this subsection, AHS will: (1) Provide the individual with: (i) A renewal form containing information available to AHS that is needed to renew eligibility; (ii) At least 30 days from the date of the renewal form to respond and provide any necessary information through any of the modes of submission specified in § 52.02(b), and to sign the renewal form in a manner consistent with § 52.02(h); (iii) Notice of the decision concerning the renewal of eligibility;

[152] 45 CFR § 155.335(l) (NPRM, 78 FR 4593).

[153] 45 CFR § 155.335(m) (NPRM, 78 FR 4593).

	(2) Verify any information provided by the individual in accordance with §§ 53.00 through 56.00; (3) Reconsider in a timely manner the eligibility of an individual who is terminated for failure to submit the renewal form or necessary information, if the individual subsequently submits the renewal form within 90 days after the date of termination without requiring a new application; (4) Not require an individual to complete an in-person interview as part of the renewal process; and (5) Include in its renewal forms its toll-free customer service number and a request that individuals call if they need assistance.
76.00 Termination of QHP coverage[154] (10/01/2013, 13-12F)	
(a) General requirements	AHS will determine the form and manner in which coverage in a QHP may be terminated.
(b) Termination events[155]	
(1) Enrollee-initiated terminations	(i) An individual will be permitted to terminate their coverage in a QHP, including as a result of the individual obtaining other MEC, with appropriate notice to AHS or the QHP. (ii) An individual will be provided an opportunity at the time of plan selection to choose to remain enrolled in a QHP if AHS identifies that they have become eligible for other MEC through the data matching described in § 74.00 and the individual does not request termination in accordance with paragraph (b)(1)(i) of this section. If an individual does not choose to remain enrolled in a QHP in such a situation, termination of their coverage will be initiated upon completion of the redetermination process specified in §§ 73.00 through 74.00.
(2) AHS or issuer-initiated termination	(i) AHS may initiate termination of an individual's coverage in a QHP, and must permit a QHP issuer to terminate such coverage, in the following circumstances: (A) The individual is no longer eligible for coverage in a QHP; (B) Non-payment of premiums for coverage of the individual, and (I) The 3-month grace period required for individuals receiving APTC has been exhausted as described in § 64.06; or

[154] 45 CFR § 155.430.

[155] 45 CFR § 155.430(b).

	(II) Any other grace period not described in paragraph (b)(2)(i)(B)(I) of this section has been exhausted; (ii) The individual's coverage is rescinded; (iii) The QHP terminates or is decertified; or (iv) The individual changes from one QHP to another during an AOEP or SEP in accordance with § 71.02 or § 71.03.
(c) Termination of coverage tracking and approval[156]	AHS will: (1) Establish mandatory procedures for QHP issuers to maintain records of termination of coverage; (2) Send termination information to the QHP issuer and HHS, promptly and without undue delay, at such time and in such manner as HHS may specify; (3) Require QHP issuers to make reasonable accommodations for all individuals with disabilities (as defined by the ADA) before terminating coverage for such individuals; and (4) Retain records in order to facilitate audit functions.
(d) Effective dates for termination of coverage[157]	(1) For purposes of this section: (i) Reasonable notice is defined as fourteen days from the requested effective date of termination; and (ii) Changes in eligibility for APTC and CSR, including terminations, must adhere to the effective dates specified in § 74.04. (2) In the case of a termination in accordance with paragraph (b)(1) of this section, the last day of coverage is: (i) The termination date specified by the individual, if the individual provides reasonable notice; (ii) Fourteen days after the termination is requested by the individual, if the individual does not provide reasonable notice; (iii) On a date determined by the individual's QHP issuer, if the individual's QHP issuer is able to effectuate termination in fewer than fourteen days and the individual requests an earlier termination effective date; or

[156] 45 CFR § 155.430(c).

[157] 45 CFR § 155.430(d).

	(iv) If the enrollee is newly eligible for Medicaid or CHIP, the day before such coverage begins. (3) In the case of a termination in accordance with paragraph (b)(2)(i)(A) of this section, the last day of coverage is the last day of the month following the month in which the notice described in § 74.03(a) is sent unless the individual requests an earlier termination effective date per paragraph (b)(1)(i) of this section. (4) In the case of a termination in accordance with paragraph (b)(2)(i)(B)(I) of this section, the last day of coverage will be the last day of the first month of the 3-month grace period. (5) In the case of a termination in accordance with paragraph (b)(2)(i)(B)(II) of this section, the last day of coverage should be consistent with existing State laws regarding grace periods. (6) In the case of a termination in accordance with paragraph (b)(2)(iv) of this section, the last day of coverage in an individual's prior QHP is the day before the effective date of coverage in their new QHP.
77.00 Administration of APTC and CSR[158] (10/01/2013, 13-12F)	
(a) Requirement to provide information to enable APTC and CSR[159]	In the event that a tax filer is determined eligible for APTC, an individual is eligible for CSR, or that such eligibility for such programs has changed, AHS will, simultaneously: (1) Transmit eligibility and enrollment information to HHS necessary to enable HHS to begin, end, or change APTC or CSR; and (2) Notify and transmit information necessary to enable the issuer of the QHP to implement, discontinue the implementation, or modify the level of APTC or CSR, as applicable, including: (i) The dollar amount of the advance payment; and (ii) The CSR eligibility category.
(b) Requirement to provide information related to employer responsibility[160]	(1) AHS will transmit the individual's name and tax filer identification number to HHS in the event that it determines that an individual is eligible for APTC or CSR based in part on a finding that an individual's employer: (i) Does not provide MEC;

[158] 45 CFR § 155.340 (NPRM, 78 FR 4593).

[159] 45 CFR § 155.340(a).

[160] 45 CFR § 155.340(b) (NPRM, 78 FR 4593).

	(ii) Provides MEC that is unaffordable, within the standard of § 23.02; or (iii) Provides MEC that does not meet the minimum value requirement specified in § 23.03. (2) If an individual for whom APTC are made or who is receiving CSR notifies AHS that they have changed employers, AHS must transmit the individual's name and tax filer identification number to HHS. (3) In the event that an individual for whom APTC are made or who is receiving CSR terminates coverage from a QHP during a benefit year, AHS will: (i) Transmit the individual's name and tax filer identification number, and the effective date of coverage termination, to HHS, which will transmit it to the Secretary of the Treasury; and (ii) Transmit the individual's name and the effective date of the termination of coverage to their employer.
(c) Requirement to provide information related to reconciliation of APTC[161]	AHS will comply with the requirements of § 78.00(a) regarding reporting to the IRS and to tax filers.
(d) Timeliness standard[162]	All information required in accordance with paragraphs (a) and (b) of this section will be transmitted promptly and without undue delay.
78.00 Information reporting by AHS[163] (10/01/2013, 13-12F)	
(a) Information required to be reported[164]	AHS will report to the IRS and each tax filer the following information for the QHP or plans in which the tax filer or a member of the tax filer's family enrolls: (1) The premium for the ABPs used to compute APTC and the period coverage was in effect; (2) The total premium for the coverage in which the tax filer or family member enrolls without reduction for APTC; (3) The aggregate amount of any APTC; (4) The name, address and Social Security number of the primary insured and the name and Social Security number or adoption tax filer

[161] 45 CFR § 155.340(c) (NPRM, 78 FR 4593).

[162] 45 CFR § 155.340(d).

[163] 26 CFR § 1.36B-5.

[164] 26 CFR § 1.36B-5(a).

	identification number of each other individual covered under the policy; (5) All information provided at enrollment or during the benefit year, including any change in circumstances, necessary to determine eligibility for and the amount of the premium tax credit; and (6) Any other information required in published guidance,[165] necessary to determine whether a tax filer has received excess advance payments.
(b) Time of reporting	[Reserved]
(c) Manner of reporting[166]	The Commissioner of the IRS may provide rules in published guidance,[167] for the manner of reporting under this section.
79.00 [Reserved] (10/01/2013, 13-12F)	

[165] See § 601.601(d)(2) of chapter one of the Code.

[166] 26 CFR § 1.36B-5(c).

[167] See § 601.601(d)(2) of chapter one of the Code.

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Part Eight
Fair hearings

80.00 Fair hearings (10/01/2013, 13-12F)

80.01 Definitions[1] (10/01/2013, 13-12F)

Fair hearing request	A clear expression, either orally or in writing, by an individual (applicant, enrollee, or employee) to have any action by AHS affecting the individual's eligibility or level of benefits or services reviewed by a fair hearings entity.
Fair hearings entity	A body designated to hear fair hearings of eligibility determinations or redeterminations. AHS's fair hearings entity for eligibility issues is the Human Services Board.

80.02 Informing individuals of fair hearing procedures[2] (10/01/2013, 13-12F)

(a) In general	Individuals have the right to appeal eligibility determinations, including initial eligibility determinations and redeterminations for enrollment, by submitting a fair hearing request. Appeals are processed in accordance with fair hearing rules as promulgated by the Human Services Board pursuant to 3 V.S.A. § 3091(b).
(b) Requesting a fair hearing	Individuals may submit a fair hearing request either orally or in writing by contacting AHS or the Human Services Board. See § 80.04(a) for the methods individuals may use to submit a fair hearing request. Individuals may request an expedited fair hearing if they request that the time otherwise permitted for a fair hearing could jeopardize their life or health or ability to attain, maintain or regain maximum function.
(c) Notification of hearing rights	AHS will, at the time specified in paragraph (d) of this subsection, provide every individual in writing: (1) An explanation of their fair-hearing rights, including their right to a fair hearing; (2) A description of the procedures by which they may submit a fair hearing request; (3) Information on their right to represent themselves or use legal counsel, a relative, a friend, or other spokesperson; (4) An explanation of the circumstances under which their eligibility may

[1] 45 CFR § 155.505 (NPRM, 78 FR 4593).

[2] 42 CFR § 431.206 (NPRM, 78 FR 4593); 45 CFR § 155.515 (NPRM, 78 FR § 4593).

	be maintained pending a fair hearing decision; and (5) An explanation that a fair hearing decision for one household member may result in a change in eligibility for other household members and may be handled as a redetermination.
(d) Timing of notice of fair hearing procedures[3]	AHS will provide notice of the fair hearing procedures when: (1) An individual submits an application; and (2) An individual's eligibility is denied, or other action is taken by AHS affecting the individual's eligibility.
80.03 Right to hearing (10/01/2013, 13-12F)	
(a) When a hearing is required[4]	AHS will grant an opportunity for a fair hearing to any individual who requests it because AHS terminates, suspends, denies or reduces their eligibility, reduces their level of benefits or services, they believe an action by AHS has been taken erroneously, or their claim is not acted upon with reasonable promptness. This includes, if applicable: (1) A determination of the amount of medical expenses which must be incurred to establish eligibility in accordance with § 7.03(a)(8) or § 8.06; (2) A determination of income for the purposes of imposing premiums and cost-sharing requirements; (3) A determination for any month that an individual is ineligible for APTC because the individual is considered eligible for other MEC under § 12.02(b) and § 23.00. This includes, but is not limited to, determinations of affordability and minimum value for employer-sponsored plans; (4) An initial determination of eligibility, including the amount of APTC and level of CSR; and (5) A redetermination of eligibility, including the amount of APTC and level of CSR; (6) An eligibility determination for an exemption from the shared responsibility payment for MEC made in accordance with § 23.06[5]; and

[3] 42 CFR § 431.206(c) (NPRM, 78 FR 4593); 45 CFR § 155.515 (NPRM, 78 FR 4593).

[4] 42 CFR § 431.220 (NPRM, 78 FR 4593); 45 CFR § 155.505 (NPRM, 78 FR 4593).

[5] 45 CFR § 155.600 et seq. (NPRM, 78 FR 7348).

	(7) A failure by AHS to provide timely notice of a determination.
(b) Exception: SSI enrollees	An applicant for or recipient of SSI/AABD benefits who is denied SSI/AABD benefits or has their SSI/AABD benefits terminated because the SSA or its agent found the individual to be not disabled, may not appeal the Medicaid denial or termination that results from this action by the SSA or its agent to the Human Services Board (see Disability Determination Appeal under § 81.00).
(c) Exception: Mass changes	There is no right to a fair hearing when either state or federal law requires automatic case adjustments for classes of enrollees, unless the reason for an individual's fair hearing request is incorrect eligibility determination.
80.04 Request for hearing[6] (10/01/2013, 13-12F)	
(a) Method for requesting a fair hearing	An individual, or an authorized representative on behalf of an individual, may submit a fair hearing request: (1) By telephone; (2) Via mail; (3) In person; (4) Through other commonly available electronic means; and (5) Via the internet.
(b) Timely request	The individual must request a fair hearing within 90 days from the date that notice of action is sent by AHS (§ 68.00).
(c) Scope of fair hearing request[7]	If an individual has been denied eligibility for Medicaid, AHS will treat an appeal of a determination of eligibility for APTC or CSR as including a request for an appeal of the Medicaid determination.
81.00 Disability determination appeal (10/01/2013, 13-12F)	
(a) SSA disability decision	(1) A final SSA disability determination is binding on AHS for 12 months or, if earlier, until the determination is changed by SSA, and may not be appealed through AHS's appeal process. However, when an individual who has been found "not disabled" by the SSA meets the

[6] 42 CFR § 431.221 (NPRM, 78 FR 4593); 45 CFR § 155.520 (NPRM, 78 FR 4593).

[7] 42 CFR § 431.221(e) (NPRM, 78 FR 4593).

	requirements specified in § 8.04, they, though not entitled to an appeal of the SSA determination through AHS's appeal process, are entitled to a separate state determination of disability for the purposes of determining their eligibility for Medicaid. (2) AHS will refer all individuals who do not meet the requirements specified in § 8.04 for a separate state determination of disability and who allege new information or evidence affecting previous SSA determinations of ineligibility based upon disability, to SSA for reconsideration or reopening of the determination.
(b) State disability decision	If AHS has made a disability determination under the circumstances specified in § 8.04, the decision may be appealed to the Human Services Board.
82.00 Benefits/Eligibility pending fair hearing (10/01/2013, 13-12F)	
82.01 Maintaining benefits/eligibility[8] (10/01/2013, 13-12F)	
(a) In general – Medicaid	When an individual appeals a decision to end or reduce Medicaid eligibility, they have the right, under certain conditions, to have Medicaid benefits continue without change until the fair hearing is resolved provided the individual submits a fair hearing request before the effective date of the adverse action and has paid in full any required premiums. If the last day before the adverse action date is on a weekend or holiday, the individual has until the end of the first subsequent working day to request the fair hearing. An individual appealing the amount of their premiums shall pay at the billed amount in order for benefits to continue until the dispute is resolved. An individual who is successful on an appeal concerning the amount of their premium will be reimbursed for any premium amounts overpaid.
(b) Exceptions - Medicaid	(1) Continuation of Medicaid benefits does not apply when an individual fails to respond to a request for additional information by the end of the 90-day reasonable opportunity period for resolving inconsistencies (§ 57.00). (2) Continuation of Medicaid benefits without change does not apply when the fair hearing is based solely on a reduction or elimination of a benefit required by federal or state law affecting some or all individuals, or when the decision does not require the minimum advance notice.
(c) Waiver of right to continued Medicaid benefits	An individual may waive their right to continued Medicaid benefits. If they do so and are successful on a fair hearing, benefits will be paid retroactively.
(d) Recovery of value of continued Medicaid	The state may recover from the individual the value of any continued Medicaid benefits paid during the fair hearing period when the individual withdraws the fair hearing before the decision is made, or following a final disposition of the matter

[8] 42 CFR § 431.230 (NPRM, 78 FR 4593); 45 CFR § 155.525 (NPRM, 78 FR 4593).

benefits	in favor of the state. Individual liability will occur only if a fair hearing decision, Secretary's reversal and/or judicial opinion upholds the adverse determination, and the state also determines that the individual should be held liable for service costs.
(e) Continuation of Medicaid benefits pending appeal of SSA determination of disability; SSI/AABD enrollees	When an SSI/AABD enrollee is determined "not disabled" by the SSA and appeals this determination, their Medicaid benefits continue as long as their SSI/AABD benefits are continued (or could have been continued but the individual chose not to receive them during the appeal period) pending a SSA decision on the appeal. When eligibility for SSI/AABD benefits is terminated following a determination of "not disabled", Medicaid benefits end unless the individual applies and is found eligible for Medicaid on the basis of a categorical factor other than disability.
(f) Continuation of Medicaid benefits pending appeal of determination of disability; SSI/AABD applicants	When an individual enrolled in Medicaid applies for SSI/AABD and is determined "not disabled" by the SSA and files a timely appeal of this determination with the SSA, their Medicaid benefits continue until a final decision is made on the appeal, provided the SSA's determination of "not disabled" is the only basis on which they might be found ineligible for Medicaid. If they continue to appeal unfavorable decisions by SSA, the "final decision" is made by the SSA Appeals Council.
(g) Continuation of eligibility for enrollment in a QHP, APTC, and CSR pending appeal of redetermination.	After receipt of a valid fair hearing request or notice that concerns an appeal of a redetermination, AHS will continue to consider the individual (appellant) eligible, while the fair hearing is pending, for QHP, APTC, and CSR, as applicable, in accordance with the level of eligibility immediately before the redetermination being appealed.
82.02 Relevant procedures (10/01/2013, 13-12F)	
	(a) If the 10-day or 5-day notice is sent as required under § 68.03, and the individual requests a hearing before the date of action, services will not be terminated or reduced until a decision is rendered after the hearing unless: (1) It is determined at the hearing that the sole issue is one of federal or state law or policy; and (2) The individual is promptly informed in writing that eligibility is to be terminated or reduced pending the hearing decision. (b) If AHS's action is sustained by the hearing decision, it may institute recovery procedures against the individual to recoup the costs of services to the extent they were furnished solely by reason of this subsection.
83.00 Managed care organization appeal, fair hearing, and grievance (10/01/2013, 13-12F)	
(a) In general	Medicaid coverage appeals are processed in accordance with applicable Managed Care Organization (MCO) Appeals Rules, at DVHA Rule 7110.2, and

	fair hearing rules, at DVHA Rule 7110.3.
(b) Grievances	An individual enrolled in Medicaid also has the right to file a grievance using the provisions of the Global Commitment for Health 1115 waiver internal grievance process. An individual (or duly-appointed representative) may file a grievance orally or in writing. The grievance provisions are found at Medicaid Covered Services Rule 7110.5.