

STATE OF VERMONT
AGENCY OF HUMAN SERVICES

DCF

Department for Children and Families

BULLETIN NO.: 16-10F

FROM: Sean Brown, Deputy Commissioner
Economic Services Division

DATE: September 1, 2016

SUBJECT: VPharm Program – Final (adopted) Rules

CHANGES ADOPTED EFFECTIVE:

INSTRUCTIONS

_____ **Adopted Rule – update**

MANUAL REFERENCES:

VPharm Rules 5420 and 5430

The Agency of Human Services (AHS) has finalized the rulemaking to amend VPharm Rules 5420 and 5430. This rulemaking is referenced as “B16-10F” for purposes of this Bulletin.

On August 15, 2016, AHS filed the adopted rules with the Office of the Secretary of State (SOS) and the Legislative Committee on Administrative Rules (LCAR) to amend VPharm Rules 5420 and 5430. These rules are effective September 1, 2016 and supersede Rules 5420 and 5430 that became effective January 1, 2006. (DCF Bulletin 05-24F)

VPharm assists eligible persons pay for prescription medicines. The eligibility standard for this program are set forth in VPharm Rules at Economic Services Division Rules 5400 *et seq.*

The changes made by this rulemaking permit AHS to conduct rolling reviews for VPharm beneficiaries instead of reviewing all beneficiaries in June of each year, and require that AHS terminate VPharm assistance when a person becomes ineligible for VPharm, including due to income or household member changes that are reported between reviews (ending the “hold harmless” provision).

This rulemaking was necessary in order to align the rule with 33 V.S.A. Sec. 2072(c) which requires termination of assistance when an individual becomes ineligible for VPharm. It was also necessary in order to permit AHS to conduct rolling reviews. The change to rolling reviews will increase efficiency and will make the VPharm review process similar to other benefit programs. 33 V.S.A. Sec. 2077(a) requires AHS to review VPharm applications annually and authorizes rolling reviews which are now required by rule.

View Final VPharm Rules 5420 and 5430

VPharm Rules 5420 and 5430, as adopted, can be viewed electronically at:

<http://dcf.vermont.gov/esd/laws-rules/proposed-adopted>.

<http://humanservices.vermont.gov/on-line-rules/esd>

Manual Maintenance

VPharm Rules

Remove

VPharm Rules 5420 and 5430 (16-10F)

Insert

VPharm Rules 5420 and 5430 (05-25F)

Administrative Procedures Process

1. AHS pre-filed the proposed rule with the Interagency Committee on Administrative Rules (ICAR) on February 26, 2016. ICAR approved the proposed rule for filing with the SOS on March 14, 2016.
2. AHS filed the proposed rule with the SOS and LCAR on March 22, 2016. This rule is referenced by the SOS as "16P-008."
3. The SOS published the notice of rulemaking on its website on March 30, 2016 and published the announcement of rulemaking in newspapers of record on April, 7, 2016.
4. A public hearing was held on April 29, 2016 at 1:00 p.m., at 289 Hurricane Lane, Williston, Vermont. There were no public attendees and no public comments were made at the hearing.
5. The comment period on the proposed rule closed on May 6, 2016. AHS received public comments from the State Health Insurance Assistance Program (SHIP) and Vermont Legal Aid.
6. AHS filed the final proposed rule with the SOS and LCAR on July 26, 2016.
7. AHS presented the rule to LCAR on August 11, 2016 and LCAR approved the rule with a modification agreed to by AHS, on the same date.
8. AHS filed the adopted rule with the SOS and LCAR on August 15, 2016.
9. The rule becomes effective as law on September 1, 2016.

Attachments to Bulletin

The first attachment to this Bulletin is a summary of responses to public comments and an explanation of other changes to HBEE in the final proposed rule. This document is titled *Responsiveness Summary and Summary of Changes* and is incorporated into this Bulletin as Attachment One.

The second attachment to this Bulletin is a memorandum to SOS and LCAR explaining the changes from the final proposed rule to the adopted rule. This document is incorporated into this Bulletin as Attachment Two.

Information about the Rulemaking Process

To get more information about the rulemaking process, see the website of the SOS at <https://www.sec.state.vt.us/> or call that office at (802) 828-2863. For information about LCAR, see <http://legislature.vermont.gov/committee/detail/2016/39> or call that office at (802) 828-5952.

Attachments

Responsiveness Summary and Summary of Changes - Attachment # 1
Memorandum to SOS and LCAR – Attachment # 2

Responsiveness Summary - VPharm Proposed Final Rule

Comment: *We are concerned with how the Department will implement the B16-10P proposal which changes the annual eligibility review for VPharm from June 30 for all beneficiaries to a rolling annual review. What is the Department's plan to initially implement this change so that reviews become staggered? Will the Department be able to process all the changes timely—those related to the elimination of the "hold harmless" provision and the eligibility reviews?*

Response: The Department of Vermont Health Access (hereinafter "the Department") has modified its technology systems used to manage eligibility for the VPharm program in order to support the staggering of VPharm eligibility reviews (renewals) so that reviews will occur on a monthly basis over the course of a twelve-month period. The first year of rolling reviews will begin in September 2016 and end in August 2017. The change to rolling reviews and the elimination of "hold harmless" (that is, the Department will start processing reported changes of income on a monthly basis) will make the VPharm program easier to manage because it will be more in-line with the review cycles and reporting requirements of other benefit programs.

The Department has a new business process to support the operationalization of the changes that are required by these rule changes. The process includes reviewing and finalizing beneficiary notices, finalizing reporting, creating job aids, and training staff. The Department is training staff on the timely processing of VPharm reviews and changes that are reported between reviews.

On about August 5, 2016 the Department will send the first notices for review and a review application to a subset of beneficiaries, those assigned a September review date. The notice will advise the beneficiary of the due date of the review application. If a beneficiary with a September review date reviews timely and is determined still eligible, the beneficiary will be approved for ongoing eligibility for VPharm for a twelve-month period from October 1, 2016 to September 30, 2017.

This process will be the same every month for the subset of VPharm beneficiaries that are assigned for review for that particular month. At the end of twelve months, all VPharm beneficiaries will have been reviewed under the rolling review process.

Comment: *Open enrollment for Medicare Part D runs annually from October 15-December 7. VPharm eligibility directly impacts the beneficiary's selection of a Medicare Part D plan as well as their out of pocket prescription costs. It will be very confusing and difficult for beneficiaries to determine if they are in the best Part D plan if they are unsure of their ongoing eligibility for VPharm. The first year of this change will be especially difficult. SHIP counselors are one of the very few places a beneficiary can get help understanding how federal and state benefits work together for their specific prescription needs. Open enrollment is a very busy time for SHIP. There*

is great potential for SHIP to have difficulty handling an increased volume of requests for service during Medicare Open Enrollment due to the change in VPharm reviews.

Response: The Department closely collaborates with the State Health Insurance Assistance Program (SHIP) during the Medicare open enrollment period and welcomes suggestions from it and other stakeholders, including the Office of the Health Care Advocate (HCA), to improve our service to VPharm beneficiaries. Changing the VPharm review cycle to a staggered, monthly review process will more evenly distribute the VPharm workload to Department staff and, similarly, it may more evenly distribute assistance sought by beneficiaries from SHIP and HCA throughout the year. The Department will ensure that the Health Access Member Services is adequately trained and appropriately staffed to handle calls from beneficiaries regarding VPharm eligibility and benefits.

Comments:

Comment from SHIP: We request: VPharm reviews be done January through September only so that Medicare beneficiaries know the status of their VPharm eligibility during Part D open enrollment.

Comment from HCA: We are concerned with how the Department will be able to implement the proposed change from the annual eligibility review to a rolling annual review. We request that the proposed rolling VPharm reviews be completed from January through September. This will allow VPharm beneficiaries to know the status of their VPharm eligibility during Part D open enrollment.

The HCA already gets many calls from consumers who are confused about selecting a Part D plan. We routinely refer consumers to SHIP counselors to get advice on selecting a Part D plan. Eligibility for VPharm directly impacts plan selection and out of pocket costs. Therefore, it is essential that consumers know their ongoing VPharm eligibility when they select a Part D plan.

Response: The Department is not able to support this request; it will conduct VPharm reviews during every calendar month, a practice that is consistent with its administration of other health benefit programs.

The VPharm program is a State Pharmaceutical Assistance Program (SPAP). Beneficiaries who have SPAP coverage qualify for a special enrollment period for Medicare Part D which allows VPharm beneficiaries to change Medicare Part D plans once a year outside of open enrollment. There are many factors determining ongoing eligibility for the VPharm program and, accordingly, there is never a guarantee during the months of Medicare Part D open enrollment of ongoing VPharm eligibility. However, because these beneficiaries may qualify once a year for a special enrollment period for Medicare Part D, rolling reviews that occur during Medicare Part D open

enrollment should not prevent or hinder a beneficiary from obtaining appropriate Medicare Part D or VPharm benefits.

Comment: *We request: The Department include our statewide Senior HelpLine number in mailings to beneficiaries so they know to call SHIP for assistance.*

Response: The notice that the Department mailed to all VPharm beneficiaries in June 2016 to inform them about the change to rolling reviews included information about getting assistance from the Senior Helpline. There will be a second mass mailing notice sent prior to September 1 to inform beneficiaries about the elimination of the “hold harmless” provision. The Department will include a referral to the Senior HelpLine on this mass notice too. Please notify the Department if SHIP wants information about calling the Senior HelpLine included on any other notices, and if so, which specific notices.

Comment: *We request: The opportunity to comment on draft notices and mailings to VPharm beneficiaries and being informed of when mailings and notices are mailed out.*

Response: The Department included Donna Sutton Fay at SHIP and Vermont Legal Aid in the review of the notice that was sent in its mass mailing in June to inform beneficiaries of the upcoming changes to VPharm renewals, and will do the same for the upcoming mass notice about the elimination of hold harmless. The Department will add Donna Sutton Fay at SHIP and Marjorie Stinchcombe of HCA to the list of external stakeholders who review new and revised VPharm notices.

Comment: *We request: That notices are mailed well in advance of any deadlines so that there is adequate time for beneficiaries to seek SHIP or other appropriate assistance. The Department should consider implementing a grace period in the initial year of this change so beneficiaries can transition more easily to the new eligibility review system.*

Response: Consistent with standard procedure in health programs, the Department will mail review notices with review applications to beneficiaries six weeks in advance of the review date. The Department will continue to provide timely notices of decision including, when the Department plans to terminate eligibility, at least 11-days prior to the VPharm closure. Beneficiaries who appeal during this 11-day period have the right to keep VPharm pending the outcome of the appeal.

The Department is considering processes that will assist beneficiaries in transitioning more easily to the new rolling review process during the first year of implementation.

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To: Jim Condos, Secretary of State; Representative Patsy French, Chair, Legislative Committee on Administrative Rules
From: Linda Narrow McLemore, Staff Attorney, Agency of Human Services
Re: 16-P08 – VPharm Adopted Rules (5420 and 5430) – Explanation of Changes from Final Proposed Rule
Date: August 15, 2016

On August 11, 2016 the Legislative Committee on Administrative Rules (LCAR) approved final proposed VPharm Rules 5420 and 5430 with a modification that is described below.

Final proposed VPharm Rule 5430 at Section B, second paragraph states:

Termination shall occur whenever a beneficiary becomes ineligible.

LCAR approved this rule with the following modification (change is in red):

Termination shall occur whenever a beneficiary becomes ineligible pursuant to Economic Services Division Rules 5410 to 5421, 5430, 5440, 5441, 2000, 2010, or 2011 or to Health Benefits Eligibility and Enrollment Rule 20.02.

The attached memorandum, dated August 11, 2016, from Charlene Dindo, Committee Assistant to LCAR, states that LCAR also authorizes the Agency of Human Services to “make modifications of a technical and typographical nature and, if necessary, additional modifications consistent with those specifically approved.” Based upon this authority, the Agency of Human Services has modified final proposed VPharm Rule 5430 at Section B, fourth paragraph, first sentence, to align references to the Health Benefits Eligibility and Enrollment Rule and the use of “section signs” (“§”) when referencing a rule part, with the modification set forth above and approved by LCAR. Specifically, the Agency of Human Services has inserted “Benefits” after “Health” and deleted “(HBEE)” after “Rule” and “§” before “64.09” as follows (changes are in red):

If a beneficiary’s coverage is terminated, solely because of nonpayment of the premium, and the reason is medical incapacity, as specified in Health Benefits Eligibility and Enrollment Rule ~~(HBEE)~~ § 64.09, the beneficiary or the beneficiary’s representative may request coverage for the period between the day coverage ended and the last day of the month in which they request coverage.

The Agency of Human Services is filing adopted VPharm Rules 5420 and 5430 which include the modifications to the final proposed rules that are described in this memorandum.

Attachment: Memorandum from LCAR approving VPharm Rule (5420 and 5430)



