

**STATE OF VERMONT
AGENCY OF HUMAN SERVICES
Office of Vermont Health Access (OVHA)**

AHS Bulletin No: 09-27E

Secretary of State's ID Number: 09E-014

FROM: Susan Besio, Ph.D., Director
Office of Vermont Health Access

DATE: 11/10/09

SUBJECT: State Fiscal Year 2010 Coverage Changes - Price for Ingredients

CHANGES ADOPTED EFFECTIVE: 11/12/09

TYPE OF RULE CHANGE

Adopted EMERGENCY Rule Changes

Final Proposed Rule Change

Proposed Rule Change

RULE REFERENCE(S):

5444 5552 7501.4

This emergency rule is being implemented as a direct result of Act #1 of the 2009 Special Session, An Act Making Appropriations for the Support of Government. This Act reduced OVHA's appropriation by 2% [Act 1, Sec. B.307]. OVHA emergency bulletin 09-19E is set to expire on November 12, 2009 and the permanent rule will not complete the APA process in time.

Sidelineing is specific to changes after Bulletin 09-19E.

Specific Changes to Rule Sections

Section	Description of Change
5444	The formulation for payment for ingredients is updated to be accurate as to how drugs are actually priced, and to be universal across all programs. The numerical percentages that AWP is discounted by in the calculations for the price of prescription ingredients were removed and the language was updated so that the percentage discounted is specified in the State Plan, and based on OVHA's appropriation in the state budget as passed by the Governor and/or Legislature.
5552	The formulation for payment for ingredients is updated to be accurate as to how drugs are actually priced, and to be universal across all programs. The numerical percentages that AWP is discounted by in the calculations for the price of prescription ingredients were removed and the language was updated so that the percentage discounted is specified in the State Plan, and based on OVHA's appropriation in the state budget as passed by the Governor and/or Legislature.

7501.4	The formulation for payment for ingredients is updated to be accurate as to how drugs are actually priced, and to be universal across all programs. The numerical percentages that AWP is discounted by in the calculations for the price of prescription ingredients were removed and the language was updated so that the percentage discounted is specified in the State Plan, and based on OVHA's appropriation in the state budget as passed by the Governor and/or Legislature.
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Language Changes (to be found throughout the rule changes - these are sidelined):

<u>Former Language</u>	<u>Current Language</u>
“recipient”	“beneficiary”
“patient”	“beneficiary”

Responses to Public Comments of Bulletin 09-17

A public hearing was held on August 18, 2009 from 9:30 am to 10:30 am and from 1:30 pm to 2:00 pm at the Office of Vermont Health Access, Williston, Vermont. Comments were received at the hearing from Matthew Byrne, Audrey McGregor Reardon, Anthony Otis and Phil O’Neill.

OVHA received written comments from Michael Sirotkin o/b/o the Community of Vermont Elders, PhRMA, AstraZeneca, Lila Richardson of the Office of Health Care Ombudsman, Jill Geiger - Lyndonville Pharmacy, Phil O’Neill, Matthew Byrne form Gravel and Shea, and Madeleine Mongan from the Vermont Medical Society.

Their comments are summarized below along with OVHA’s responses.

Comment: By removing the percentages and specifying that the calculation for the Price for Ingredients is determined based on the Legislature’s approved budget, OVHA is denying pharmacies the formal protections/federal standards of the APA process, including public notice and public hearings. Specifically, 42 CFR 447.205 states that OVHA has to go through the APA process to make adjustments to rate calculations.

Response: The removal of the calculation from Medicaid rule does not remove these protections/standards. The state budgetary process is open and public hearings and comments to legislators are not impacted. 42 CFR 447.205 does not require that rule changes need to be done to change payment rates. It describes the public notice requirements for changing payments rates in the Medicaid State Plan. The notice requirements in the CFR will still be followed. The opportunity to provide written comments is required under both the APA process and State Plan Amendment process, so this protection remains. Public hearings are not required by either process.

Comment: The budget reduction instituted a 2% reduction across OVHA services, but the AWP was reduced by 2.3%.

Response: Correct. Taking a reduction from AWP was determined to be the most stable way to implement a 2% savings on total estimated drug spending. In order to achieve a 2% savings, OVHA calculated estimated SFY 2010 pharmacy costs by using SFY 2008 costs, applying a 5% annual cost trend, and adjusting for membership estimates and policy decisions such as requiring 90-day refills for maintenance medications. Applying such factors resulted in total estimated SFY 2010 pharmacy costs of \$123,241,398. Two percent of this figure is \$2,464,828. To achieve savings of \$2.4 million, OVHA adjusted the AWP from AWP-11.9% to AWP-14.2%.

To get more information about the Administrative Procedures Act and the Rules applicable to state rule making go to the website of the Office of the Vermont Secretary of State at: <http://vermont-archives.org/aparules/index.htm> or call Louise Corliss at 828-2863. [General information, not specific rule content information]

For information on upcoming hearing before the Legislative Committee on Administrative rules go to the website of the Vermont Legislature at: <http://www.leg.state.vt.us/schedules/schedule2.cfm> or call 828-5760.

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

11/12/09

Bulletin No. 09-27E

5444

5444 Price for Ingredients

Payment for the ingredients in covered prescriptions is made for two groups of drugs: multiple-source (i.e., therapeutically equivalent or generic drugs) and "other" drugs (i.e., single-source drugs [brand name] or drugs "other" than multiple-source).

A. For multiple-source drugs, the price for ingredients will be the lowest of:

1. the CMS Federal Upper Limit (FUL), or
2. the state Maximum Allowable Cost (MAC), or
3. the Usual and Customary (U&C) charge, or
4. the Average Wholesale Price (AWP) reduced by a percentage that is reflective of The Office of Vermont Health Access' appropriation in the state budget as passed by the Governor and/or the Legislature.

B. For "other" drugs, the price for ingredients shall be the lowest of:

1. the Usual and Customary (U&C) charge, or
2. the Average Wholesale Price (AWP) reduced by a percentage that is reflective of The Office of Vermont Health Access' appropriation in the state budget as passed by the Governor and/or the Legislature.

The exact payment methodology can be found in Attachment 4.19-B of the Vermont Medicaid State Plan.

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When a physician certifies in his or her own handwriting that a specific brand of a multiple-source drug is medically necessary for a particular beneficiary, the price for ingredients will be calculated as for "other" drugs. The physician's handwritten phrase "brand necessary" or "brand medically necessary" must appear on the face of the prescription.

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Bulletin No. 09-27E

7501.4

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