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## Part Six Small Employer Health-Benefits Program Rules

### 31.00 Definitions (01/15/2017, GCR 16-099)

	As used only in Part Six, the following terms have the following meanings:
Annual employee open enrollment period <sup>1</sup>	<p>A period in which a qualified employee enrolling in a qualified health plan through Vermont Health Connect (VHC) may:</p> <ul style="list-style-type: none"> <li>(a) Create an account;</li> <li>(b) 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;</li> <li>(c) Complete the employee eligibility and enrollment application;</li> <li>(d) Receive assistance from VHC in completing the application;</li> <li>(e) Estimate whether the coverage offered by the employer meets applicable federal affordability standards, by             <ul style="list-style-type: none"> <li>(1) exiting the employee application; and</li> <li>(2) submitting an application for individual eligibility determination for affordability assistance to purchase coverage as a qualified individual;</li> </ul> </li> <li>(f) Designate an authorized representative according to Section 5.02.</li> </ul> <p>The annual employee open enrollment period shall precede the end of the employer's current plan year and shall follow the annual employer election period.</p>
Annual employer election period <sup>2</sup>	<p>The employer election period comes before both the employee open enrollment period and the completion of the employer's current plan year. During the employer election period, the qualified employer may change its participation in VHC for the next plan year, and elect the following:</p> <ul style="list-style-type: none"> <li>(a) The employees to whom it will offer coverage;</li> <li>(b) Whether to offer coverage to the qualified employee's dependents, and the coverage tiers to offer, i.e., single, two-person, adult plus dependent, or family;</li> <li>(c) Whether to offer stand-alone dental coverage;</li> </ul>

<sup>1</sup> 45 CFR § 155.725(e)

<sup>2</sup> 45 CFR § 155.725(c).

	<p>(d) Whether the individual owners, partners, retirees, or others will participate in a plan offered to employees;</p> <p>(e) 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.</p> <p>(f) The method by which the qualified employer makes QHPs available to qualified employees (see: employer choice, section 34.00); and</p> <p>(g) The amount of its contribution towards the premium cost of each coverage tier for each class of participant.</p>
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. <sup>3</sup>
Employee <sup>4</sup>	Any individual employed by an employer. An employee does not include an individual and his or her spouse with respect to a trade or business, whether incorporated or unincorporated, which is wholly owned by the individual or by the individual and his or her spouse, and does not include a partner in a partnership and his or her spouse.
Employer <sup>5</sup>	<p>(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.</p> <p>(b) Such term includes employers with one or more employees, and</p> <p>(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.<sup>6</sup></p>
Full-time employee <sup>7</sup>	<p>(a) 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.</p> <p>(b) For purposes of the definition of small employer, full-time employee does not include seasonal workers.</p> <p>(c) For purposes of the definition of qualified employer, full-time employee does not include</p>

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<sup>3</sup> 45 CFR § 144.103.

<sup>4</sup> 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) explained at 29 CFR § 2510.3-3.]

<sup>5</sup> 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).]

<sup>6</sup> 45 CFR § 155.20 referencing 26 U.S.C. § 414.

<sup>7</sup> 45 CFR § 155.20.

	seasonal employees.
Qualified employee <sup>8</sup>	An employee made eligible to enroll in coverage through VHC through an offer of coverage from a qualified employer.
Qualified employer <sup>9</sup>	A qualified employer is a small employer that: <ul style="list-style-type: none"> <li>(a) 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</li> <li>(b) 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 employee's primary worksite.</li> </ul>
Seasonal employee <sup>10</sup>	<p>The term seasonal employee means an employee who is hired into a position for which the customary annual employment is six months or less and the employee does not have any hour of service for the employer for a period of at least 13 consecutive weeks before resuming employment</p> <p>Customary means that by the nature of the position an employee in this position typically works for a period of six months or less, and that period should begin each calendar year in approximately the same part of the year, such as summer or winter.<sup>11</sup></p> <p>In certain unusual instances, the employee can still be considered a seasonal employee even if the seasonal employment is extended in a particular year beyond its customary duration (regardless of whether the customary duration is six months or is less than six months). For example, if ski instructors at a resort have a customary period of annual employment of six months, but are asked in a particular year to work an additional month because of an unusually long or heavy snow season, they would still be considered seasonal employees.<sup>12</sup></p> <p>Employers may but are not required to provide seasonal employees with coverage for purposes of being a qualified employer.</p>

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<sup>8</sup> 45 CFR §155.20.

<sup>9</sup> 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.

<sup>10</sup> 45 CFR § 155. 20; 26 USC § 4980H(c)(4); 26 CFR § 54.4980H-1(a)(38) .

<sup>11</sup> Shared Responsibility for employers regarding health coverage, 79 FR 8544, 8593 (Feb. 12, 2014).

<sup>12</sup> Shared Responsibility for employers regarding health coverage, 79 FR 8544, (Feb. 12, 2014).

Seasonal worker <sup>13</sup>	<p>An employee who performs labor or services on a seasonal basis, including ordinarily, when the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. A worker who moves from one seasonal activity to another, while employed in agriculture or performing agricultural labor, is employed on a seasonal basis even though she may continue to be employed during a major portion of the year. Seasonal workers include retail workers employed exclusively during holiday seasons.</p> <p>Seasonal workers are not counted when determining whether an employer is a small employer.</p>
Small employer <sup>14</sup>	<p>(a) For plan years beginning on or after January 1, 2014 through December 31, 2015, an entity which employed an average of at least 1 but not more than 50 full-time employees on working days during the preceding calendar year and who employs at least one employee on the first day of the plan year.</p> <p>(b) Beginning on January 1, 2016, an entity which employed an average of at least 1 but not more than 100 employees on working days during the preceding calendar year and which employs at least 1 employee on the first day of the plan year. The number of employees shall be calculated using the method set forth in section 4980H(c)(2) of the Internal Revenue Code; in general, by:</p> <ol style="list-style-type: none"> <li>(1) Counting each full-time employee as one employee;</li> <li>(2) Adding the number of hours worked by part-time employees in a month and dividing by 120; and</li> <li>(3) Excluding seasonal workers if the employer's workforce exceeds 50 full-time employees for 120 days or fewer during the calendar year.</li> </ol>
<b>32.00 Employer eligibility (01/15/2017, GCR 16-099)</b>	
(a) Employer's continuing eligibility <sup>15</sup>	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.
(b) Employer eligibility requirements <sup>16</sup>	<p>To the extent permitted by HHS:</p> <ol style="list-style-type: none"> <li>(1) VHC shall permit small employers to purchase QHPs directly from a health insurer under contract with VHC.</li> <li>(2) Upon request, VHC must provide a small employer with an eligibility determination as</li> </ol>

<sup>13</sup> 33 V.S.A. § 1804, citing definition in 26 U.S. Code § 4980H, 26 CFR § 54.4980H-1(a)(39), citing 9 C.F.R § 500.20(s)(1).

<sup>14</sup> 26 U.S.C. § 4980H(c)(2); 42 U.S.C. § 18024(b); 45 CFR § 155.20; 33 V.S.A. §§1804, 1811(a)(3).

<sup>15</sup> 45 CFR § 155.710(d).

<sup>16</sup> 33 V.S.A. § 1803(b)(4); 45 CFR § 155.710(b), § 155.715(a).

	to whether it is a qualified employer with a notice of approval or denial of eligibility and the employer's right to appeal such eligibility determination. VHC may accept an employer's attestation of eligibility as eligibility is defined in §§ 31.00 and 32.00(b) instead of determining the employer's eligibility.
(c) Employer application <sup>17</sup>	VHC must use a single application to determine employer eligibility and to collect information necessary for purchasing coverage. Such application must collect the following: <ul style="list-style-type: none"> <li>(1) Employer name and address of employer's locations;</li> <li>(2) Number of full time employees;</li> <li>(3) Employer Identification Number (EIN); and</li> <li>(4) A list of qualified employees and their taxpayer identification numbers.</li> </ul>
(d) Filing the application <sup>18</sup>	VHC must provide the tools to file an application <ul style="list-style-type: none"> <li>(1) Via an Internet Web site;</li> <li>(2) By telephone through a call center;</li> <li>(3) By mail; and</li> <li>(4) In person, with reasonable accommodations for those with disabilities.</li> </ul>
(e) Verification of eligibility <sup>19</sup>	For the purpose of verifying employer eligibility VHC: <ul style="list-style-type: none"> <li>(1) May establish, in addition to or in lieu of reliance on the employer application or attestation, additional methods to verify the information provided by the employer on the application; and</li> <li>(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).</li> </ul>
(f) Eligibility adjustment period <sup>20</sup>	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: <ul style="list-style-type: none"> <li>(1) Make a reasonable effort to identify and address the causes of such inconsistency, including as a result of typographical or other clerical errors; <ul style="list-style-type: none"> <li>(i) A reasonable effort by VHC includes resolution of VHC errors, and</li> </ul> </li> </ul>

<sup>17</sup> 45 CFR § 155.730(b), (d), (e).

<sup>18</sup> 45 CFR § 155.405(c)

<sup>19</sup> 45 CFR § 155.715(c).

<sup>20</sup> 45 CFR § 155.715(d).

	<ul style="list-style-type: none"> <li>(ii) VHC outreach to the employer contact, as necessary;</li> <li>(2) Issue a written notice to the employer if the inconsistency remains unresolved after reasonable efforts have been made by VHC to resolve the inconsistency;</li> <li>(3) Provide the employer with a period of 30 days from the date on which the notice described in paragraph (f)(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</li> <li>(4) If, after the 30-day period described in paragraph (3) VHC has not received satisfactory documentary evidence, VHC must: <ul style="list-style-type: none"> <li>(i) 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</li> <li>(ii) 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.</li> </ul> </li> </ul>
(g) Notice of employer eligibility determination <sup>21</sup>	Upon request, VHC must provide a small employer with an eligibility determination as to whether it is a qualified employer and a notice of approval or denial of eligibility, and the employer's right to appeal such eligibility determination.
<b>33.00 Employee eligibility (01/15/2017, GCR 16-099)</b>	
(a) Eligibility to enroll in VHC <sup>22</sup>	<ul style="list-style-type: none"> <li>(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. A qualified employee is eligible to enroll his or her dependents in coverage through VHC if the offer from the qualified employer includes an offer of dependent coverage.</li> <li>(2) An individual and his or her spouse with respect to a trade or business, whether incorporated or unincorporated, which is wholly owned by the individual and his or her spouse may participate and enroll in any qualified health plan that he or she is offering to at least one qualified employee.</li> <li>(3) A member of a partnership that is a qualified employer may participate and enroll in any qualified health plan that the partnership is offering to at least one qualified employee.</li> </ul>
(b) Employee application <sup>23</sup>	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).

<sup>21</sup> 45 CFR § 155.715(e).

<sup>22</sup> 45 CFR § 155.710(e), 77 FR 18399 (March 27, 2012).

<sup>23</sup> 45 CFR § 155.730(c), (d), (e).

(c) Employee application verification <sup>24</sup>	<p>For the purpose of verifying employer and employee eligibility, VHC</p> <ol style="list-style-type: none"> <li>(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;</li> <li>(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 application; and</li> <li>(3) Must collect only the minimum information necessary for verification of eligibility in accordance with the eligibility standards described in § 33.00(a)(1).</li> </ol>
(d) Eligibility adjustment period. <sup>25</sup>	<p>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—</p> <ol style="list-style-type: none"> <li>(1) Make a reasonable effort to identify and address the causes of such inconsistency, including as a result of typographical or other clerical errors;</li> <li>(2) Notify the individual of the inability to substantiate his or her employee status;</li> <li>(3) Provide the employee with a period of 30 days from the date on which the notice described in subsection (2) is sent to the employee to either present satisfactory documentary evidence to support the employee's application, or resolve the inconsistency; and</li> <li>(4) If, after the 30-day period described in subsection (3), VHC has not received satisfactory documentary evidence, VHC must notify the employee of its denial of eligibility in accordance with this subsection, 33.00(f).</li> </ol>
(e) Employee information safeguarded <sup>26</sup>	<p>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.</p>
(f) Notification of employee eligibility. <sup>27</sup>	<p>For an employee requesting an eligibility determination as to whether the employee is a qualified employee, VHC must notify the employee and employer of the determination and the employee's right to appeal such eligibility determination.</p>
<p><b>34.00 Employer choice<sup>28</sup> (01/15/2017, GCR 16-099)</b></p>	

<sup>24</sup> 45 CFR § 155.715(c).

<sup>25</sup> 45 CFR § 155.715(d).

<sup>26</sup> 45 CFR § 155.730(g).

<sup>27</sup> 45 CFR § 155.715(f).

<sup>28</sup> 45 CFR § 155.705(b)(2), (b)(3).

Two models of employer choice	<p>(a) Except as provided for in 34.00(c), a qualified employer may offer QHPs on VHC to its employees and at the employer's option to the employees' dependents<sup>29</sup> in one of the following ways:</p> <ul style="list-style-type: none"> <li>(1) Permitting the qualified employee to select any plan from among all QHPs offered on VHC; or</li> <li>(2) Permitting the qualified employee to select any QHP offered on VHC by one issuer of the employer's choice;</li> </ul> <p>(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.</p>
<b>35.00 Employee enrollment waiting periods<sup>30</sup> (01/15/2017, GCR 16-099)</b>	
	<ul style="list-style-type: none"> <li>(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.</li> <li>(b) Eligibility conditions that are based solely on the lapse of a time period are permissible for no more than 90 days.</li> <li>(c) [Reserved]</li> </ul>
<b>36.00 Rolling enrollment and short plan years<sup>31</sup> (01/15/2017, GCR 16-099)</b>	

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<sup>29</sup> IRS Notice 2013-45. Applicable large employers may be subject to an assessable payment by the IRS for failing to offer its minimum essential coverage to their full-time employees and their employees' dependents which for purpose of the penalty does not mean spouses. Notice 2013-45 states that no employer shared responsibility payments will be assessed for 2014.

<sup>30</sup> 45 CFR § 147.116.

<sup>31</sup> 45 CFR § 155.725(b).

	<p>(a) Qualified employers' plan years must be on a calendar year term beginning January 1, 2015.</p> <p>(b) VHC will permit a qualified employer to purchase coverage for its small group at any point during the year. The plan year will end on December 31 of the calendar year in which coverage first became effective.</p> <p>(c) In 2016, qualified employers with 51 to 100 employees will be eligible to enroll in a QHP for the first time and may experience a short plan year.</p> <p>(i) QHP issuers may provide transitional relief to employers renewing during the 2015 plan year which have a short subsequent plan year as a result of becoming a small employer, by extending cost share accumulators into the short 2016 plan year.</p>
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**37.00 Employer election period (01/15/2017, GCR 16-099)**

(a) Annual employer election period <sup>32</sup>	VHC will provide qualified employers with a standard election period prior to the completion of the employer's plan year and before the annual employee open enrollment period.
(b) Notice of election period <sup>33</sup>	VHC shall ensure that employers are notified of the annual election period in advance of the start of the employer election period.

**38.00 Employee enrollment periods<sup>34</sup> (01/15/2017, GCR 16-099)**

(a) Employee enrollment periods, generally	<p>(1) Employees will have the opportunity to select qualified health plans, and a stand-alone dental plan if the employer offers dental coverage, verify and provide necessary personal information for enrollment of himself or herself and his or her dependents, if the employer offers coverage to employee dependents, and make changes to enrollment.</p> <p>(2) 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.</p>
(b) Annual open enrollment period <sup>35</sup>	VHC will provide a standardized annual open enrollment period for qualified employees prior to the completion of the applicable qualified employer's plan year and after that employer's annual election period.
(c) Notice of annual	VHC must provide notification to a qualified employee of the annual open enrollment period in

<sup>32</sup> 45 CFR § 155.725(c).

<sup>33</sup> 45 CFR § 155.725(d).

<sup>34</sup> 45 CFR §155.410; §45 CFR §155.725.

<sup>35</sup> 45 CFR §155.725(e).

open enrollment period <sup>36</sup>	advance of the open enrollment period.
(d) Newly qualified employees enrollment period <sup>37</sup>	For an employee who becomes a qualified employee outside of the initial or annual open enrollment period, a 30-day enrollment period begins on the first day of becoming a qualified employee. The enrollment period must end no sooner than 15 days prior to the date that any applicable employee waiting period longer than 45 days would end if the employee made a plan selection on the first day of becoming eligible.
<b>39.00 Employee special enrollment periods (01/15/2017, GCR 16-099)</b>	
(a) Events resulting in a special enrollment period <sup>38</sup>	<p>(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:</p> <ul style="list-style-type: none"> <li>(i) An event described in § 71.03(d)(1), (2), (4), (5), (7), (8), or (9);</li> <li>(ii) 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</li> <li>(iii) 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).</li> </ul> <p>(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.</p>
(b) Duration of special enrollment periods <sup>39</sup>	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. <sup>40</sup>	Loss of minimum essential coverage is determined using the provisions of § 71.03(e).
<b>40.00 Enrollment (01/15/2017, GCR 16-099)</b>	

<sup>36</sup> 45 CFR §155.725(f).

<sup>37</sup> 45 CFR §155.725(g).

<sup>38</sup> 45 CFR §155.725(j).

<sup>39</sup> 45 CFR §155.725(j).

<sup>40</sup> 45 CFR §155.725(j); 45 CFR § 155.420(e); 26 CFR § 54.9801-6(a)(3)(i-iii).

(a) Generally	<p>(1) VHC must ensure that employee coverage shall be effective for the coverage effective date selected by the employer on its application during the employer election period, if VHC receives all necessary enrollee information by the employee plan selection deadline, and payment is made in full.</p> <p>(2) Upon receipt of full payment, VHC must transfer enrollment information to issuers on or before the next non-holiday business day.</p> <p>(3) For employers choosing to direct enroll with the issuers, employee coverage shall be effective for the coverage effective date agreed upon by the employer and the issuer.</p>
(b) New enrollments	<p>(1) The effective date of coverage for a QHP selection received by VHC from a newly qualified employee being added to an employer's plan will be the first day of a month following plan selection, unless the employee is subject to a waiting period consistent with § 35.00, in which case the effective date may be on the first day of a later month, but in no case may the effective date fail to comply with § 35.00.</p> <p>(2) For plan selections received by VHC within the last five days of the month, VHC will transfer enrollment information and QHP issuer will effectuate coverage without undue delay and, if necessary, retroactive to the effective date in (1) of this subsection.</p>
<b>41.00 Coverage effective dates<sup>41</sup> (01/15/2017, GCR 16-099)</b>	
(a) Generally	<p>(1) Coverage will become effective on the employer selected date provided full payment is received by VHC by the due date on the invoice of the month before the coverage month, except that</p> <p>(2) When a qualified employee is eligible to make, and makes a plan selection during a special enrollment period, coverage will become effective under (c) of this section, and</p> <p>(3) Coverage for a newly qualified employee being added to an employer's plan will become effective under § 40.00(b).</p>
(b) Coverage effective dates generally, for plan years beginning on or after January 1, 2015	<p>(1) VHC shall ensure a coverage effective date of January 1<sup>st</sup> for a QHP selection received by VHC from a qualified employee on or before November 30 of the year before a plan year beginning January 1, 2015, and subsequent years as long as payment is received in accordance with (a) of this section.</p> <p>(2) For an employer choosing to direct enroll with a QHP issuer, an issuer may provide a January 1 coverage effective date for a plan selection made by a qualified employee after November 30.</p>
(c) Employee special enrollment period	The effective dates of coverage are determined using the provisions of § 70.03(b)(2).

<sup>41</sup> 45 CFR § 155.725(h).

coverage effective dates <sup>42</sup>	
(d) Notification of effective date <sup>43</sup>	VHC must ensure that a QHP issuer notifies a qualified employee enrolled in a QHP of the effective date of coverage.
<b>42.00 Renewal of employee coverage<sup>44</sup> (01/15/2017, GCR 16-099)</b>	
	<p>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:</p> <p>(a) The qualified employee terminates coverage from such QHP;</p> <p>(b) The qualified employee enrolls in another QHP; or</p> <p>(c) The QHP is no longer available to the qualified employee.</p>
<b>43.00 Terminations<sup>45</sup> (01/15/2017, GCR 16-099)</b>	
(a) In general	The provisions of this section apply when enrollment in a QHP takes place through Vermont Health Connect.
<b>43.01 Employer withdrawal from VHC<sup>46</sup> (01/15/2017, GCR 16-099)</b>	
(a) Employer withdrawal	A qualified employer may withdraw from coverage through VHC with advance notice in accordance with applicable state and federal law.

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<sup>42</sup> 45 CFR §155.725(j)(5); 45 CFR § 155.420(b)

<sup>43</sup> 45 CFR §155.720(e).

<sup>44</sup> 45 CFR §155.725(i).

<sup>45</sup> 45 CFR § 155.735, 156.285(d).

<sup>46</sup> 45 CFR § 155.715(g), 155.735(b).

(b) Employee notice of termination	<p>VHC will ensure that:</p> <ol style="list-style-type: none"> <li>(1) Each QHP issuer terminates the enrollment through VHC of the employer's qualified employees enrolled in the QHP through VHC.</li> <li>(2) Each of the employer's qualified employees enrolled in a QHP through VHC is notified of the termination of coverage prior to such termination. <ol style="list-style-type: none"> <li>(i) Such notification provides information about other potential sources of coverage, including access to individual market coverage through VHC.</li> </ol> </li> </ol>
<p><b>43.02 Termination of employer group for non-payment of premiums<sup>47</sup> (01/15/2017, GCR 16-099)</b></p>	
(a) Conditions under which QHP issuer may terminate coverage	<ol style="list-style-type: none"> <li>(1) If premium payment is not received one month from the first of the coverage month, the QHP issuer may terminate the qualified employer for lack of payment provided notice requirements in 43.06 are met.</li> </ol>
(b) Reinstatement	<ol style="list-style-type: none"> <li>(1) The QHP issuer must reinstate the qualified employer in its previous coverage if the qualified employer: <ol style="list-style-type: none"> <li>(i) Requests reinstatement within 30 days following its termination for non-payment,</li> <li>(ii) Pays all premiums owed including any prior premiums owed for coverage during the one month grace period, and</li> <li>(iii) Pays the premium for the next month's coverage.</li> </ol> </li> <li>(2) Reinstatement is not allowed more than twice within a plan year. Upon a third instance of termination for non-payment, a qualified employer may not re-enroll until the following calendar year.</li> <li>(3) VHC will ensure that the employer's qualified employees enrolled in a QHP through VHC are notified of the group's reinstatement.</li> </ol>
(c) Payment for COBRA Continuation Coverage	<p>Nothing in this section modifies existing obligations related to the administration of coverage required under 29 U.S.C. 1161, <i>et seq.</i>, as described in 26 CFR part 54.</p>

<sup>47</sup> 45 CFR §155.735(c), 156.285(d).

**43.03 Termination of employee or dependent coverage<sup>48</sup> (01/15/2017, GCR 16-099)**

(a) Termination due to loss of eligibility	(1) If a qualified employee or their dependent is no longer eligible for coverage under the employer's group health plan, VHC will notify the QHP issuer of the loss of eligibility.
(b) Employee voluntary termination	(1) To the extent permitted by the qualified employer and allowable under applicable state and federal law, <sup>49</sup> VHC will allow an employee to terminate his or her coverage in a QHP, including as a result of the employee obtaining other minimum essential coverage, with fourteen day notice to VHC.  (2) VHC will:  (i) Notify the employee's employer of employee termination. <sup>50</sup>  (ii) Notify the QHP issuer of employee termination.  (3) The last day of coverage is the last day of the month in which VHC receives notice in accordance with (1), unless employee requests and QHP issuer agrees to an earlier termination effective date.

**43.04 Termination effective dates (01/15/2017, GCR 16-099)**

(a) Other termination effective dates	The effective dates of termination resulting from events not described in this section are determined using the provisions of § 76.00(d).
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**43.05 Termination of coverage tracking and approval<sup>51</sup> (01/15/2017, GCR 16-099)**

(a) Termination of coverage tracking and approval	VHC and QHP issuers must maintain records of termination of coverage in compliance with § 76.00(c).
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**43.06 Notice of Termination<sup>52</sup> (01/15/2017, GCR 16-099)**

(a) Employee notice	(1) If a qualified employee or their dependent is terminated from coverage due to non-payment of premiums or due to a loss of eligibility to participate in VHC, including where an employee loses his or her eligibility because a qualified employer has lost its eligibility, VHC will ensure that the employee is notified of the termination.
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<sup>48</sup> 45 CFR §155.735(d).

<sup>49</sup> See, e.g., 26 CFR § 1.125-4.

<sup>50</sup> 45 CFR § 155.720(h).

<sup>51</sup> 45 CFR §155.735(e).

<sup>52</sup> 45 CFR §155.735(g).

	<p>(2) The notice will include the termination effective date, reason for termination, and information about other potential sources of coverage, including access to individual market coverage through VHC.</p> <p>(3) The notice will be sent within 3 business days of the determination to terminate coverage, if an electronic notice is sent, and within 5 business days if a mailed hard copy notice is sent.</p>
(b) Employer notice	<p>(1) If an employer group's coverage or enrollment through VHC is terminated due to non-payment of premiums or, where applicable, due to a loss of the qualified employer's eligibility to offer coverage through VHC, VHC will ensure that the employer is notified of the termination.</p> <p>(2) Such notice will include the termination effective date and reason for termination.</p> <p>(3) Such notice will be sent within 3 business days of the determination to terminate coverage, if an electronic notice is sent, and within 5 business days if a mailed hard copy notice is sent.</p>
(c) Notices to dependents	When a primary subscriber and his or her dependents live at the same address, a separate termination notice need not be sent to each dependent at that address, provided that the notice sent to each primary subscriber at that address contains all required information about the termination for the primary subscriber and his or her dependents at that address.
<b>44.00 Employer and employee eligibility appeals<sup>53</sup> (01/15/2017, GCR 16-099)</b>	
(a) Employer right to appeal	<p>An employer may appeal:</p> <p>(1) A notice of denial of eligibility under § 32.00(g); or</p> <p>(2) A failure of the VHC to provide a timely eligibility determination or a timely notice of an eligibility determination in accordance with § 32.00(g).</p>
(b) Employee right to appeal	<p>An employee may appeal:</p> <p>(1) A notice of denial of eligibility under § 33.00(f); or</p> <p>(2) A failure of the VHC to provide a timely eligibility determination or a timely notice of an eligibility determination in accordance with § 33.00(f).</p>
(c) Notices	<p>Notices of the right to appeal a denial of eligibility must be written and include —</p> <p>(1) The reason for the denial of eligibility, including a citation to the applicable regulations; and</p> <p>(2) The procedure by which the employer or employee may request an appeal of the denial</p>

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<sup>53</sup> 45 CFR §155.740.

	of eligibility.
(d) Appeal request	<p>VHC and AHS must:</p> <ol style="list-style-type: none"> <li>(1) Allow an employer to request an appeal within 90 days from the date of the notice of denial of eligibility.</li> <li>(2) Accept appeal requests submitted — <ol style="list-style-type: none"> <li>(i) By telephone;</li> <li>(ii) By mail; or</li> <li>(iii) Via the Internet.</li> </ol> </li> <li>(3) Assist the applicant or enrollee in making the appeal request, if requested.</li> <li>(4) Not limit or interfere with the applicant’s right to make an appeal request; and</li> <li>(5) Consider an appeal request valid if it is submitted within 90 days from the date of the notice of denial of eligibility.</li> </ol>
(e) Notice of appeal request	<p>Upon receipt of a valid appeal request, AHS must —</p> <ol style="list-style-type: none"> <li>(1) Send timely acknowledgement to the employer of the receipt of the appeal request, including — <ol style="list-style-type: none"> <li>(i) An explanation of the appeals process; and</li> <li>(ii) Instructions for submitting additional evidence for consideration by AHS.</li> </ol> </li> <li>(2) Promptly notify VHC of the appeal, if the appeal request was not initially made to VHC.</li> <li>(3) Upon receipt of an appeal request that is not valid because it fails to meet the requirements of this section, AHS must — <ol style="list-style-type: none"> <li>(i) Promptly and without undue delay, send written notice to the employer or employee that is appealing that — <ol style="list-style-type: none"> <li>(A) The appeal request has not been accepted,</li> <li>(B) The nature of the defect in the appeal request; and</li> <li>(C) An explanation that the employer or employee may cure the defect and resubmit the appeal request within 90 days from the date of the notice of denial of eligibility, or within a reasonable timeframe established by AHS.</li> </ol> </li> <li>(ii) Treat as valid an amended appeal request that meets the requirements of this section.</li> </ol> </li> </ol>
(f) Transmittal and receipt of records	<ol style="list-style-type: none"> <li>(1) Upon receipt of a valid appeal request VHC must promptly transmit, via secure electronic interface, to AHS — <ol style="list-style-type: none"> <li>(i) The appeal request, if the appeal request was initially made to VHC; and</li> </ol> </li> </ol>

	<ul style="list-style-type: none"> <li>(ii) The eligibility record of the employer or employee that is appealing.</li> <li>(2) AHS must promptly confirm receipt to VHC of the records VHC transmitted.</li> </ul>
(g) Dismissal of appeal	<p>AHS:</p> <ul style="list-style-type: none"> <li>(1) Must dismiss an appeal if the employer that is appealing — <ul style="list-style-type: none"> <li>(i) Withdraws the request in writing; or</li> <li>(ii) Fails to submit an appeal request 90 days from the date of the notice of denial of eligibility to AHS.</li> </ul> </li> <li>(2) Must provide timely notice to the employer or employee that is appealing of the dismissal of the appeal request, including the reason for dismissal, and must notify VHC of the dismissal.</li> <li>(3) May vacate a dismissal if the employer or employee makes a written request within 30 days of the date of the notice of dismissal showing good cause why the dismissal should be vacated.</li> </ul>
(h) Procedural rights of the employer and employee	AHS must provide the employer, or the employer and employee if an employee is appealing, the opportunity to submit relevant evidence for review of the eligibility determination.
(i) Adjudication of VHC appeals	<p>Employer or employee appeals must:</p> <ul style="list-style-type: none"> <li>(1) Be reviewed <i>de novo</i> by one or more impartial officials who have not been directly involved in the employer or employee eligibility determination implicated in the appeal, and</li> <li>(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.</li> </ul>
(j) Appeal decisions	<p>Appeal decisions must:</p> <ul style="list-style-type: none"> <li>(1) Be based solely on <ul style="list-style-type: none"> <li>(i) The evidence referenced in (h)(2) of this section, and</li> <li>(ii) The employer and employee eligibility requirements for VHC.</li> </ul> </li> <li>(2) State the decision, including a plain language description of the effect of the decision on the appellant's eligibility;</li> <li>(3) Summarize the facts relevant to the appeal;</li> <li>(4) Identify the legal basis, including the regulations that support the decision;</li> <li>(5) State the effective date of the decision; and</li> <li>(6) Be effective as follows:</li> </ul>

	<p>(i) If an employer is found eligible under the decision, then at the employer's option, the effective date of coverage or enrollment through VHC under the decision can either be made retroactive to the effective date of coverage or enrollment through VHC that the employer would have had if the employer had been correctly determined eligible, or prospective to the first day of the month following the date of the notice of the appeal decision.</p> <p>(ii) For employee appeal decisions only, if an employee is found eligible under the decision, then at the employee's option, the effective date of coverage or enrollment through VHC under the decision can either be made effective retroactive to the effective date of coverage or enrollment through VHC that the employee would have had if the employee had been correctly determined eligible, or prospective to the first day of the month following the date of the notice of the appeal decision.</p> <p>(iii) If the employer or employee is found ineligible under the decision, then the appeal decision is effective as of the date of the notice of the appeal decision.</p>
(k) Notice of appeal decision	AHS 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.
(l) Implementation of VHC appeal decisions	VHC must promptly implement the appeal decision upon receiving the notice of appeal decision under (j) of this section.
(m) Appeals record	<p>(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.</p> <p>(2) AHS must provide public access to all appeal records, subject to all applicable federal and state laws regarding privacy, confidentiality, disclosure, and personally identifiable information.</p>
<b>45.00 Employer appeals of employee eligibility for APTC/CSR<sup>54</sup> (01/15/2017, GCR 16-099)</b>	
(a) Notice to an employer of employee's receipt of APTCs and CSRs	VHC will notify an employer that an employee has been determined eligible for advance payments of the premium tax credit and cost-sharing reductions and has enrolled in a qualified health plan through VHC in accordance with § 71.01(e).
(b) Employer Right to appeal	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

<sup>54</sup> 45 CFR § 155.555.

	respect to an employee. The employer will file the appeal with the HHS appeals entity or other entity as directed by VHC in the notice in (a) of this section.
<b>46.00 Premium processing (01/15/2017, GCR 16-099)</b>	
(a) Premium aggregation	VHC must perform the following functions related to premium payment administration: <ul style="list-style-type: none"> <li>(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;</li> <li>(2) Collect from each employer the total amount due and make payments to QHP issuers for all enrollees; and</li> <li>(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.</li> </ul>
(b) QHP issuers must accept VHC payments	QHP Issuer must accept payment from the VHC on behalf of a qualified employer or an enrollee.
<b>47.00 [Reserved] (01/15/2017, GCR 16-099)</b>	
<b>48.00 [Reserved] (01/15/2017, GCR 16-099)</b>	
<b>49.00 [Reserved] (01/15/2017, GCR 16-099)</b>	
<b>50.00 [Reserved] (01/15/2017, GCR 16-099)</b>	