

plan"; deleted definitions "Medicare-endorsed prescription drug discount card program," "Medicare Prescription Drug Discount Card and Transitional Assistance Program", and "Transitional Assistance"; rewrote definitions "PAAD Co-pay", "Prescription drugs" and "Reasonable cost"; and in definition "Pharmacy", inserted the last sentence.

Case Notes

"Income" defined. Atty.Gen.F.O.1978, No. 3.

8:83-2.2 Special needs trusts

(a) To be considered a special needs trust, the trust shall include the following provisions:

1. The trust shall specifically state that the trust is for the sole benefit of the trust beneficiary;

2. The trust shall specifically state that its purpose is to permit the use of trust assets to supplement, and not to supplant, impair or diminish, any benefits or assistance of any Federal, State or other governmental entity for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving;

3. The trust shall specifically state the age of the trust beneficiary, that the trust beneficiary is disabled within the definition of 42 U.S.C. § 1382c(a)(3), and whether the trust beneficiary is competent at the time the trust is established;

4. The trust shall specifically identify, in an attached schedule, the source of the initial trust property and all assets of the trust;

5. If the trust makes provisions which are intended to limit invasion by creditors or to insulate the trust from liens or encumbrances, the trust shall state that such provisions are not intended to limit the State's right to reimbursement or to recoup incorrectly paid benefits;

6. The special needs trust shall state that it is established by a parent, grandparent, or legal guardian of the trust beneficiary or by a court;

7. The trust shall specifically state that it is irrevocable. Neither the grantor, the trustee(s), nor the beneficiary shall have any right or power, whether alone or in conjunction with others, in whatever capacity, to alter, amend, revoke, or terminate the trust or any of its terms or to designate the persons who shall possess or enjoy the trust estate during his or her lifetime;

8. The trustee shall be specifically identified by name and address. The trust shall state that the original trust beneficiary cannot be the trustee. The trust shall make provisions for naming a successor trustee in the event that any trustee is unable or unwilling to serve. The Office of Support Services for the Aged, Division of Senior Benefits and Utilization Management, as well as the trust beneficiary and/or guardian, shall be given prior notice if there is a change in the trustee;

9. The trust shall specifically state that the trustee shall fully comply with all State laws, including the Prudent Investor Act, N.J.S.A. 3B:20-11.1 et seq. The trust shall provide that the trustee cannot take any actions not authorized by, or without regard to, State laws. If the trust gives the trustee authorization or power not provided for in the Prudent Investor Act, an accompanying letter shall provide an explanation for each such authorization or power;

10. The trust shall specifically state that the trustee shall be compensated only as provided by law (N.J.S.A. 3B:18-2 et seq.). If the trust identifies a guardian, the trust shall specifically identify him or her by name. A guardian shall be compensated only as provided by law;

11. The trust shall specify that a formal or informal accounting of all expenditures made by the trust shall be submitted to the appropriate eligibility determination agency on an annual basis;

12. The State shall be given advance notice of any expenditure in excess of \$5,000, and of any amount which would substantially deplete the principal of the trust. Notice shall be given to the Office of Support Services for the Aged, Division of Senior Benefits and Utilization Management, PO Box 715, Trenton, NJ 08625-0715, or any successor agency, 45 days prior to the expenditures;

13. New Jersey rules and laws do not permit a trust to create a will for an incompetent or a minor. The money creating the trust, any additions and/or interest accumulated, cannot be left to other parties, but shall pass by intestacy. The trust shall not create other trusts within it.

New Rule, R.2004 d.349, effective September 20, 2004.
See: 36 N.J.R. 1859(a), 36 N.J.R. 4311(a).

SUBCHAPTER 3. ADMINISTRATIVE ORGANIZATION

8:83-3.1 Department of Health and Senior Services

The Department of Health and Senior Services is the administrative unit of the State government which has control over the administration of PAAD. Under the terms of the PAAD law, this Department is responsible for the general policies governing administration of PAAD, and for effecting the issuance of rules, regulations and procedures in accordance with the Administrative Procedure Act for implementing the statutory provisions.

8:83-3.2 Division of Medical Assistance and Health Services

The Division of Medical Assistance and Health Services is the administrative unit of the Department of Human Services that performs certain administrative functions for, or in conjunction with, the Department.

8:83-3.3 Pharmaceutical Assistance to the Aged and Disabled Program

The Pharmaceutical Assistance to the Aged and Disabled is the program in the Department which has the direct responsibility for the processing of eligibility applications from applicants.

SUBCHAPTER 4. SCOPE OF SERVICE

8:83-4.1 Statutory limitations

By statute, the Pharmaceutical Assistance to the Aged and Disabled Program is limited to payment or reimbursement to pharmacies for the reasonable cost of prescription drugs for eligible persons, which exceeds the PAAD co-pay and to Medicare Part D authorized prescription drug plans for the premiums associated with PAAD beneficiaries.

Amended by R.1985 d.690, effective January 21, 1986.

See: 17 N.J.R. 2332(a), 18 N.J.R. 190(a).

Added text "insulin, insulin syringes ... diabetic testing materials".

Amended by R.1993 d.155, effective April 5, 1993.

See: 24 N.J.R. 4328(a), 25 N.J.R. 1514(a).

Revised copayment to \$5.00.

Amended by R.1998 d.176, effective April 6, 1998.

See: 29 N.J.R. 5280(a), 30 N.J.R. 1314(b).

Rewrote the section.

Amended by R.2009 d.16, effective January 5, 2009.

See: 40 N.J.R. 4479(a), 41 N.J.R. 221(a).

Inserted a comma following "persons" and inserted "and to Medicare Part D authorized prescription drug plans for the premiums associated with PAAD beneficiaries".

8:83-4.2 Principles of reimbursement to participating pharmacies

(a) Reimbursement for PAAD prescriptions shall be made only to pharmacies located in New Jersey except as indicated in (b)1 below and operating under a valid permit from the Board of Pharmacy of the State of New Jersey. In order to become an approved provider, such a pharmacy must file an application and agreement of participation, which must be approved by the Division of Medical Assistance and Health Services of the Department of Human Services. The application shall contain the pharmacy's NSC Supplier Number issued by the National Supplier Clearinghouse (NSC) or other appropriate agent of the Centers for Medicare and Medicaid Services (CMS) or a statement that the pharmacy has applied for an NSC Supplier Number to enroll as a Medicare Part B supplier. A copy of one of the proofs of enrollment listed in N.J.A.C. 8:83C-1.3(c)2 shall be attached to the application. The pharmacy shall also complete and return the Electronic Data Interchange (EDI) Enrollment Form attached to the application.

(b) No reimbursement shall be made to an unlicensed pharmacy or to a pharmacy located in another state or country except as follows:

1. The Department shall have the authority to coordinate benefits with any voluntary mail-order prescription drug program in a Medicare Part D plan provider network.

(c) Reimbursement on behalf of PAAD beneficiaries shall be made directly to the participating pharmacies and shall be for the reasonable cost of prescription drugs of beneficiaries as determined by the Commissioner, Department of Human Services, which exceeds the PAAD co-payment per prescription.

Amended by R.1993 d.155, effective April 5, 1993.

See: 24 N.J.R. 4328(a), 25 N.J.R. 1514(a).

Revised copayment to \$5.00.

Amended by R.2003 d.248, effective June 16, 2003.

See: 34 N.J.R. 3456(a), 35 N.J.R. 2642(a).

Rewrote (a).

Amended by R.2009 d.16, effective January 5, 2009.

See: 40 N.J.R. 4479(a), 41 N.J.R. 221(a).

In (a), substituted "shall" for "will" following "prescriptions", inserted "except as indicated in (b)1 below", inserted a comma following "participation", and substituted "an" for "a" following "has applied for"; in the introductory paragraph of (b), substituted "shall" for "will" and substituted "except as follows:" for a period at the end; added (b)1; and in (c), substituted "shall" for "will" twice and "PAAD" for "\$5.00".

8:83-4.3 Interchangeable drug products

(a) Whenever PAAD is the primary payer and any interchangeable drug product contained in the latest list approved and published pursuant to N.J.A.C. 8:71 is available for the prescription written, the PAAD Program shall reimburse for multisource generic drugs without prior authorization, but not for multisource brand name drugs without prior authorization.

(b) If the prescriber does not specify to the contrary, the PAAD beneficiary has two options:

1. To purchase an interchangeable drug product which is equal to or less than the maximum allowable cost, at the PAAD co-pay; or

2. To purchase the prescribed drug product, which is higher in cost than the maximum allowable cost and pay in full.

(c) If the prescriber specifies on the prescription that substitution is not permitted, and that the brand name drug is medically necessary, when required, the PAAD Program shall reimburse for the reasonable cost of the prescribed product, less the PAAD co-pay pursuant to the requirements respecting prior authorization set forth in the Fiscal Year 2008 Appropriations Act, P.L. 2007, c. 111, approved June 28, 2007, as amended and supplemented by subsequent State appropriations acts.

Amended by R.1993 d.155, effective April 5, 1993.

See: 24 N.J.R. 4328(a), 25 N.J.R. 1514(a).

Revised copayment to \$5.00.

Amended by R.1998 d.176, effective April 6, 1998.

See: 29 N.J.R. 5280(a), 30 N.J.R. 1314(b).