

CHAPTER 167

PHARMACEUTICAL ASSISTANCE TO THE AGED AND DISABLED ELIGIBILITY MANUAL

Authority

N.J.S.A. 30:4D-24.

Source and Effective Date

R.2009 d.16, effective December 9, 2008.
See: 40 N.J.R. 4479(a), 41 N.J.R. 221(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1.c(2), Chapter 167, Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual, expires on June 6, 2016. See: 48 N.J.R. 105(a).

Chapter Historical Note

Chapter 83, Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual, was originally codified in Title 10 as Chapter 69A, Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual. Chapter 69A, Pharmaceutical Assistance to the Aged Program, was adopted as R.1976 d.102, effective April 5, 1976. See: 7 N.J.R. 505(c), 8 N.J.R. 232(b).

Pursuant to Executive Order No. 66(1978), Chapter 69A, Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual, was readopted as R.1988 d.211, effective April 20, 1988. See: 20 N.J.R. 369(a), 20 N.J.R. 1106(a).

Pursuant to Executive Order No. 66(1978), Chapter 69A, Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual, was readopted as R.1993 d.175, effective March 26, 1993. See: 24 N.J.R. 4479(a), 25 N.J.R. 1764(a).

Pursuant to Reorganization Plan No. 001-1996, Chapter 69A, Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual, was recodified to Title 8, Chapter 83, effective October 15, 1997. See: 29 N.J.R. 4679(a).

Pursuant to Executive Order No. 66(1978), Chapter 83, Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual, was readopted as R.1998 d.176, effective March 13, 1998. See: 29 N.J.R. 5280(a), 30 N.J.R. 1314(b).

Chapter 83, Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual, was readopted as R.2003 d.392, effective September 9, 2003. See: 35 N.J.R. 1335(a), 35 N.J.R. 4721(a).

Chapter 83, Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual, was readopted as R.2009 d.16, effective December 9, 2008. See: Source and Effective Date. See, also, section annotations.

Chapter 83 of Title 8, Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual, was recodified as Chapter 167 of Title 10 by administrative change, effective June 16, 2014. As a part of the recodification, administrative changes were made throughout concerning cross-references, agency names and addresses, and the elimination of text rendered redundant or moot by the transfer of authority. See: 46 N.J.R. 1643(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 167, Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual, was scheduled to expire on December 9, 2015. See: 43 N.J.R. 1203(a).

Cross References

See N.J.A.C. 10:51-4.1 et seq., Pharmaceutical assistance to the aged and disabled program.

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SUBCHAPTER 1. INTRODUCTION

10:167-1.1 Purpose and intent

(a) It is intended that Pharmaceutical Assistance to the Aged and Disabled (PAAD) shall extend assistance to certain persons whose level of income disqualifies them for medical assistance under the New Jersey Medical Assistance and

Health Services Act, but who have significant needs for prescribed drugs and/or insulin, insulin needles, insulin syringes, and/or certain diabetic materials and are unable to fully meet the cost of such items.

(b) This manual has been developed as a statement of policy and procedures and is applicable only to eligibility for the PAAD Program.

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 in (a) "and/or certain diabetic materials".
Amended by R.1998 d.176, effective April 6, 1998.
See: 29 N.J.R. 5280(a), 30 N.J.R. 1314(b).

10:167-1.2 Legal authority

(a) The New Jersey Program of Pharmaceutical Assistance to the Aged and Disabled (PAAD) was established by Chapter 194, Laws of 1975, as amended by:

1. Chapter 194, Laws of 1975, effective August 21, 1975. Amended by Chapter 312, Laws of 1975, effective February 19, 1976;
2. Chapter 268, Laws of 1977, effective January 1, 1978;
3. Chapter 171, Laws of 1978, effective December 22, 1978;
4. Chapter 27, Laws of 1979, effective March 1, 1979;
5. Chapter 499, Laws of 1981, effective March 1, 1982;
6. Chapter 209, Laws of 1985, effective August 1, 1985;
7. Chapter 221, Laws of 1987, effective July 29, 1987 and retroactive to December 31, 1986;
8. Chapter 16, Laws of 1989, effective February 1, 1989; and
9. Chapter 84, Laws of 1991, effective April 3, 1991 and retroactive to January 1, 1991; and
10. Chapter 30, Laws of 1992, effective June 29, 1992.
11. Chapter 3, Laws of 1993, effective January 13, 1993 and retroactive to January 1, 1993;
12. Chapter 27, Laws of 1995, effective February 15, 1995, retroactive to January 1, 1995;
13. Chapter 323, Laws of 1995, effective April 4, 1996;
14. Reorganization Plan No. 001-1996; and
15. Chapter 281, Laws of 2003, effective January 1, 2005.

(b) These Statutes supplement the New Jersey Medical Assistance and Health Services Act (P.L. 1968, c.413).

Amended by R.1985 d.259, effective May 20, 1985.
See: 17 N.J.R. 367(a), 17 N.J.R. 1318(b).

Deleted (a)1, and substituted new text; added (a)5.
Amended by R.1985 d.690, effective January 21, 1986.
See: 17 N.J.R. 2332(a), 18 N.J.R. 190(a).
Added (a)6.

Amended by R.1988 d.174, effective April 18, 1988.
See: 19 N.J.R. 2375(a), 20 N.J.R. 902(a).

Added (a)7.
Amended by R.1990 d.182, effective March 19, 1990.
See: 21 N.J.R. 3047(a), 22 N.J.R. 953(a).
Added (a)8.

Amended by R.1991 d.563, effective November 18, 1991.
See: 23 N.J.R. 2623(a), 23 N.J.R. 3514(a).

New (a)9. added; reference to Chapter 84, Laws of 1991.
Amended by R.1993 d.608, effective December 6, 1993.

See: 25 N.J.R. 3407(a), 25 N.J.R. 5528(b).
Amended by R.1994 d.191, effective April 18, 1994.

See: 25 N.J.R. 5750(a), 26 N.J.R. 1657(a).
Amended by R.1996 d.7, effective January 2, 1996.

See: 27 N.J.R. 3541(a), 28 N.J.R. 184(c).
Amended by R.1998 d.176, effective April 6, 1998.

See: 29 N.J.R. 5280(a), 30 N.J.R. 1314(b).
In (a), added 13 and 14.

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)13, deleted "and" from the end; in (a)14, substituted "; and" for the period at the end; and added (a)15.

SUBCHAPTER 2. DEFINITIONS

10:167-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Annual income" means all income from whatever source derived, actually received or anticipated.

"Anticipated income" means the amounts of income the applicant can reasonably be expected to receive during the calendar year.

"Applicant" means an individual who applies for PAAD, either personally or through an authorized agent.

"Authorized agent" means a person who initiates the PAAD application for a person who is incompetent or incapable of filing the PAAD application on his/her behalf.

"Authorized representative" means a person with legal authority to act on behalf of an individual in making decisions related to the individual's enrollment in, disenrollment from, and access to negotiated prices in the Medicare Prescription Drug Program.

"Beneficiary" means an individual who has been found eligible for PAAD benefits.

"Business income" means net income derived from a business, trade or profession or from the rental of property after deductions of the ordinary and necessary expenses attributable to the business, trade, profession, or to the rental or property which are allowed under the Federal Internal Revenue Code and regulations issued thereunder.

"Calendar year" means a year beginning January 1 and ending on December 31. It is the base period utilized to determine annual income and PAAD eligibility.

“Centers for Medicare and Medicaid Services” or “CMS” means the agency of the Federal Department of Health and Human Services that is responsible for the administration of the Medicare program in the United States.

“Commissioner” means the Commissioner of the Department of Human Services.

“Current year” means the calendar year in which a person applies or reapplies for PAAD.

“Department” means the Department of Human Services.

“Electronic Data Interchange (EDI) Enrollment Form” means an agreement signed by a Medicare Part B Supplier authorizing PAAD to bill Medicare electronically on its behalf for claims that are eligible under both PAAD and Medicare.

“Expiration date” means the date when a beneficiary’s PAAD eligibility ends.

“Food Stamp Program” means the Federal nutrition program established by 42 U.S.C. §1786 within the U.S. Department of Agriculture/Food and Nutrition Services which provides assistance with the purchase of food for low income households. This program is administered by the county welfare agencies under supervision by the New Jersey Department of Human Services, Division of Family Development.

“Health Insurance Claim number” means the primary reference number, assigned by Medicare, which usually includes the beneficiary’s Social Security Number and which is used when filing Medicare claims, including prescription claims under Medicare Part D.

“Legend Drug” means any approved drug product which by Federal law cannot be dispensed without a prescription and bears the statement on the label: “Caution: Federal law prohibits dispensing without a prescription”.

“Lifeline Credit Program” means the utility assistance program that offers a benefit in the form of a credit to the utility account during the heating season to eligible New Jersey residents.

“Low Income Home Energy Assistance Program” means the Federal program authorized by 42 U.S.C. §8621 that assists low income households that pay a high proportion of household income for home energy, primarily in meeting their immediate home energy needs, and which is administered in New Jersey by the Department of Community Affairs.

“Low income subsidy” means the additional financial assistance provided by the Medicare Part D Program to individuals approved by the Federal Social Security Administration, which pays, in part or in whole, Medicare Part D premiums, deductibles and coinsurance for the eligible person, pursuant to 20 CFR Part 418, Subpart D, and 42 CFR

Part 423, which are incorporated herein by reference, as amended and supplemented.

“Low income subsidy application” means the Federal Social Security application for the Medicare Part D low income subsidy entitled the “Application for Help with Medicare Prescription Drug Plan Costs”, form SSA-1020, available on-line at www.socialsecurity.gov.

“Medicare” means medical assistance provided to certain aged and disabled persons as authorized under Title XVIII (Medicare) of the Social Security Act.

“Medicare authorized prescription drug plan” or “PDP” means a private prescription drug plan that has been submitted to and approved by the Centers for Medicare and Medicaid Services to provide prescription insurance coverage for individual citizens under the Medicare Part D program.

“Medicare Part B Supplier” means a supplier of Medicare Part B (Medical Insurance) services to Medicare beneficiaries including Durable Medicare Equipment, Prosthesis, Orthotics, and Supplies (DMEPOS).

“Medicare Prescription Drug Program” means the program established under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108-173, 117 Stat. 2066, approved December 8, 2003.

“National Suppliers Clearinghouse (NSC)” means the entity that issues Durable Medicare Equipment, Prosthesis, Orthotics, and Supplies (DMEPOS) supplier authorization numbers nationwide to Medicare Part B Suppliers for the Centers for Medicare and Medicaid Services (CMS). The National Supplier Clearinghouse is located at P.O. Box 100142, Columbia, SC 29202-3142.

“NSC Supplier Number” means the authorization number issued by the National Supplier Clearinghouse (NSC) to a Medicare Part B Supplier of Durable Medicare Equipment, Prosthesis, Orthotics, and Supplies (DMEPOS) for the Centers for Medicare and Medicaid Services (CMS).

“PAAD Co-pay” means a maximum amount of \$6.00 for generic drugs and \$7.00 for brand name drugs, which must be paid by each PAAD beneficiary to the pharmacy toward the cost for each prescription for a legend drug and/or insulin, insulin syringes, and insulin needles. If the prescription is paid first by payers other than PAAD and the remaining cost of the prescription is less than \$6.00 for generic drugs and \$7.00 for brand name drugs, then that remaining cost becomes the PAAD co-pay. The co-pay is not reimbursable by the PAAD. The co-payment shall be paid in full by each eligible person to the pharmacist at the time of each purchase of prescription drugs, and shall not be waived, discounted or rebated in whole or in part.

“Pharmaceutical assistance” means the payments authorized by the Department in the form of a check to a participating pharmacy on behalf of a PAAD beneficiary.

“Pharmacy” means any pharmacy located in New Jersey, operating under a valid permit from the Board of Pharmacy of the State of New Jersey, which has filed an application and agreement of participation, which has been approved by the New Jersey Medicaid Program. The term “pharmacy” also includes any volunteer prescription drug mail-order program in a Medicare Part D plan provider network.

“Prescription drugs” means all approved legend drugs, including any interchangeable drug products contained in the latest list approved and published pursuant to N.J.A.C. 8:71 and in conformance with the provisions of the “Prescription Drug Price and Quality Stabilization Act,” and insulin, insulin syringes, and insulin needles when prescribed.

1. The term “prescription drugs” includes:

i. Any drug product which by Federal law cannot be dispensed unless ordered by a physician, dentist or podiatrist;

ii. Every product considered to be a legend prescription drug which is required by the Federal Food, Drug and Cosmetic Act to have the following statement on the manufacturer’s original packaging label: “Caution: Federal law prohibits dispensing without a prescription”;

iii. Insulin, insulin syringes and insulin needles. While not legend drugs, these items are covered by this program when prescribed; and

iv. Syringes and needles for injectable medicines for the treatment of multiple sclerosis.

2. The term “prescription drugs” excludes cosmetics drugs as indicated at N.J.A.C. 10:167A-1.15 unless medically necessary.

“Previous year” means the calendar year preceding the year in which the person is applying or reapplying for PAAD. For example, 1995 is the “previous year” when referring to an application which is dated between January 1, 1996 through December 31, 1996, inclusive.

1. If a person, who is required to submit a Federal, State and/or City Income Tax return, applies for PAAD at the beginning of a calendar year but has not yet filed an income tax return for the previous year, the last year for which the person filed a tax return is considered to be the “previous year” when completing the PAAD application.

“Provider” means any individual, partnership, association, corporation, institution, or any other public or private entity, agency, or business concern, meeting applicable requirements and standards for participation in the New Jersey Medicaid Program, and the Pharmaceutical Assistance to the Aged and Disabled Program, and where applicable, holding a current valid license, and lawfully providing medical care, services, goods and supplies authorized under N.J.S.A. 30:4D-1 et seq. and amendments thereto.

“Reasonable cost” means the maximum allowable cost of prescription drugs plus a dispensing fee, which meets the conditions set forth in the Fiscal Year 2009 Appropriations Act, P.L. 2008, c. 35, approved June 30, 2008, as amended and supplemented by subsequent State appropriations acts containing methodologies or requirements for the calculation of reasonable costs under the Program.

“Resident” means “one legally domiciled within the State (of N.J.) for a period of 30 days immediately preceding the date of application for inclusion in the PAAD Program. Mere seasonal or temporary residence within the State, of whatever duration, does not constitute domicile.” (See N.J.A.C. 10:69A-6.4 for residence requirements.)

“Special needs trust” means a trust containing the assets of a disabled individual that is established for the sole benefit of the individual by a parent, grandparent, legal guardian or court prior to the time the individual reaches the age of 65. (See N.J.A.C. 10:167-2.2 for provisions.)

“Tenants Lifeline Assistance Program” means a utility assistance program that offers a benefit in the form of a check issued to tenants whose utilities are included in their rent and do not have a separate utility bill.

“Universal Service Fund” means the program established by N.J.S.A. 48:3-60 in the Board of Public Utilities and administered by the New Jersey Department of Community Affairs that helps ensure that income eligible New Jersey utility customers pay no more than six percent of their annual income for their natural gas and electric service combined. Households with income equal to or less than 175 percent of the Federal Poverty Level are income eligible.

“Viatical settlement” means the sale or cashing in of a life insurance policy prior to death of the insured, due to the fact that the insured has experienced a catastrophic, life-threatening or chronic illness or condition.

As amended, R.1989 d.375, eff. September 25, 1979.
See: 11 N.J.R. 558(c).

As amended, R.1982 d.198, eff. June 21, 1982.
See: 14 N.J.R. 321(b), 14 N.J.R. 659(a).

Section substantially amended.

As amended, R.1985 d.259, effective May 20, 1985.
See: 17 N.J.R. 367(a), 17 N.J.R. 1318(b).

Added definition “reasonable cost”.

Amended by R.1985 d.690, effective January 21, 1986.
See: 17 N.J.R. 2332(a), 18 N.J.R. 190(a).

Amended “PAAD Co-pay” and “prescription drugs”.
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).

In “Prescription drugs” added 1v; in “Previous year”, inserted “for which the person filed a tax return” following “last year” in 1; and inserted “Provider”.

Amended by R.2000 d.286, effective July 3, 2000.
See: 32 N.J.R. 428(a), 32 N.J.R. 2441(b).

In “Prescription drugs”, added 2.
Amended by R.2003 d.248, effective June 16, 2003.
See: 34 N.J.R. 3456(a), 35 N.J.R. 2642(a).

Added "Center for Medicare and Medicaid Services (CMS)", "Electronic Data Interchange (EDI) Enrollment Form", "Medicare", "Medicare Part B Supplier", "National Suppliers Clearinghouse (NSC) and "NSC Supplier Number"; in "Prescription drugs" amended the N.J.A.C. reference in 2.

Amended by R.2004 d.349, effective September 20, 2004.

See: 36 N.J.R. 1859(a), 36 N.J.R. 4311(a).

Added "Special needs trust" and "Viatical settlement". Amended by R.2004 d.459, effective December 20, 2004.

See: 36 N.J.R. 3619(a), 36 N.J.R. 5682(b).

Added "Authorized representative", "Medicare-endorsed prescription drug discount card program", "endorsed program," or "endorsed discount card program", "Medicare Prescription Drug Discount Card and Transitional Assistance Program" or "Medicare Drug Discount Card Program" and "Transitional Assistance".

Amended by R.2006 d.431, effective December 18, 2006.

See: 38 N.J.R. 1124(a), 38 N.J.R. 5360(a).

In definition "Authorized representative", substituted "and the Medicare Prescription Drug Program" for "as defined by 42 CFR §403.802"; substituted definition "Centers for Medicare and Medicaid Services" or "CMS" for definition "Centers for Medicare and Medicaid Services (CMS)"; in definition "Centers for Medicare and Medicaid Services" or "CMS", substituted "that" for "which" and deleted the last sentence; and added definition "Medicare Prescription Drug Program".

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

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

In definition "Authorized representative", substituted "in" for "and Transitional Assistance under the Medicare Prescription Drug Discount Card and Transitional Assistance Program and"; added definitions "Health Insurance Claim number", "Low income subsidy", "Low income subsidy application" and "Medicare authorized prescription drug plan"; deleted definitions "Medicare-endorsed prescription drug discount card program," "Medicare Prescription Drug Discount Card and Transitional Assistance Program", and "Transitional Assistance"; re-wrote definitions "PAAD Co-pay", "Prescription drugs" and "Reasonable cost"; and in definition "Pharmacy", inserted the last sentence.

Amended by R.2011 d.248, effective October 3, 2011.

See: 43 N.J.R. 360(a), 43 N.J.R. 2596(a).

Added definitions "Food Stamp Program", "Low Income Home Energy Assistance Program" and "Universal Service Fund".

Case Notes

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

10:167-2.2 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, 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, 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

10:167-3.1 Department of Human Services

The Department of Human 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.

10:167-3.2 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.

10:167-3.3 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

10:167-4.1 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".

10:167-4.2 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. 10:167A-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 or specialty pharmacy in a Medicare Part D plan provider network, or a mail order prescription drug program required by a PAAD beneficiary's primary payer.

(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".
Amended by R.2009 d.293, effective October 5, 2009.
See: 41 N.J.R. 1637(a), 41 N.J.R. 3804(a).

In the introductory paragraph of (b), inserted a comma following "country"; and in (b)1, inserted "or specialty pharmacy" and ", or a mail order prescription drug program required by a PAAD beneficiary's primary payer".

10:167-4.3 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).

Substituted references to the PAAD co-pay for references to the \$5.00 co-pay throughout; in (a), designated 1, and added 2; and in (c), inserted "and that the brand name drug is medically necessary, when required," following "permitted,"

Amended by R.2009 d.16, effective January 5, 2009.
See: 40 N.J.R. 4479(a), 41 N.J.R. 221(a).

Rewrote (a); in (b)2, substituted "in full" for "the difference between the two, in addition to the PAAD co-pay"; and in (c), substituted "shall" for "will", and "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." for ". In this instance, the beneficiary may purchase the prescribed product at the PAAD co-payment."

Case Notes

Regulation of the division of medical assistance and health services which excludes senior citizens who are inpatients in nursing homes or hospitals from the benefits provided by the pharmaceutical assistance for the aged program for the coverage of prescribed drugs, insulin, insulin syringes or insulin needles is inconsistent with the governing statutory provisions on eligibility relating to income of the recipient and is invalid. Atty.Gen.F.O.1978, No. 3.

10:167-4.4 Beneficiary co-payment

(a) No direct payment to beneficiaries shall be made under the PAAD Program, except as noted in (b) below. The beneficiary must pay the pharmacy a nonrefundable PAAD co-pay per prescription or per purchase of insulin, insulin syringes, insulin needles or syringes and needles for injectable medicines used for the treatment of multiple sclerosis.

(b) In the event that a PAAD beneficiary receives his/her eligibility identification card later than 30 days from the date that his/her complete and valid Eligibility Application was received by the PAAD program, he/she may be eligible to receive direct reimbursement for prescription drugs purchased. See N.J.A.C. 10:69A-5.4 for details.

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 in (a) "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).

In (a), substituted a reference to a nonrefundable PAAD co-pay for a reference to a nonrefundable \$5.00 co-payment, and added a reference to syringes and needles for injectable medicines used for the treatment of multiple sclerosis.

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" and deleted "or diabetic testing materials" following the first occurrence of "needles".

10:167-4.5 Medicare Part D Prescription Drug Plan premium payments

(a) The Department shall pay Medicare Part D premiums to the PDP on behalf of PAAD beneficiaries in accordance with the Fiscal Year 2008 Appropriations Act, P.L. 2007, c. 111, as amended and supplemented by subsequent State appropriations acts.

1. If the PDP is a Medicare-authorized prescription drug plan associated with a Medicare-managed care plan (MA-PD), the PAAD program shall pay an amount towards the prescription portion of the premium up to and including the benchmark amount set for New Jersey by CMS for the current benefit year pursuant to 42 CFR 423.780(b)(2), as amended and supplemented, which is incorporated herein by reference.

2. If the PDP is an MA-PD and the premium cost is above the benchmark amount set for New Jersey by CMS, the PAAD beneficiary shall be responsible for any premium costs that are above the benchmark amount.

New Rule, R.2009 d.16, effective January 5, 2009.
See: 40 N.J.R. 4479(a), 41 N.J.R. 221(a).

SUBCHAPTER 5. APPLICATION PROCESS

10:167-5.1 General provisions

The application process includes all activity relating to a request for eligibility determination. It begins with the receipt by the Department of an eligibility application and continues in effect until there is an official disposition of the request by the Department.

10:167-5.2 Authorized agent

(a) In those instances where the applicant is incompetent or incapable of filing an eligibility application on his or her own behalf, the Department shall accept any one of the following listed in the order of priority, as an authorized agent for the purpose of initiating such application:

1. Power of attorney;
2. A close relative by blood or marriage, that is, parent, spouse, son, daughter, brother, sister;
3. A representative payee designated by the Social Security Administration;
4. A staff member of a public or private social service agency, of which the person is a client, who has been designated by the agency to so act;
5. A friend.

(b) The PAAD program is authorized to act as an agent or representative for PAAD beneficiaries in order to enroll the beneficiary into a Medicare Part D prescription drug plan and/or to submit an application on behalf of the beneficiary for the Medicare Part D low income subsidy in accordance with 20 CFR 418.3210, as amended and supplemented, which is incorporated herein by reference. The PAAD program may also act as a beneficiary's authorized agent to appeal PDP formulary limitations.

Amended by R.1993 d.175, effective April 19, 1993.
See: 24 N.J.R. 4479(a), 25 N.J.R. 1764(a).

Corrected term "application" to "applicant".
Amended by R.1998 d.176, effective April 6, 1998.
See: 29 N.J.R. 5280(a), 30 N.J.R. 1314(b).

In (a), inserted a new 1, and recodified former 1 through 4 as 2 through 5.

Amended by R.2009 d.16, effective January 5, 2009.
See: 40 N.J.R. 4479(a), 41 N.J.R. 221(a).

Added (b).

10:167-5.3 Eligibility effective date

(a) The PAAD eligibility effective date for an initial PAAD applicant, who meets all of the PAAD eligibility criteria, is the date when processing of a valid and complete eligibility application is completed by the PAAD program.

(b) The PAAD program shall conduct periodic redeterminations of the eligibility of PAAD beneficiaries.

1. Those not requested to submit a renewal application for any given year shall be mailed an eligibility card for the year automatically.

2. Those beneficiaries required to renew annually or biennially must submit a valid renewal application 45 days prior to their expiration date to insure that their PAAD benefits continue uninterrupted; however, if beneficiaries are late in submitting their renewal applications, but apply within 90 days after the expiration date, their PAAD benefits will continue uninterrupted. If the renewal application is submitted more than 90 days after the expiration date, the eligibility effective date will be the date when a valid and completed renewal application is processed by the PAAD program. If the PAAD beneficiary is late in filing his or her renewal application by more than 90 days after the expiration date, the PAAD program shall not make reimbursement until the new eligibility period has been established.

Amended by R.1985 d.295, effective May 20, 1985.

See: 17 N.J.R. 367(a), 17 N.J.R. 1318(a).

Deleted text from (b) and substituted new.

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

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

PAAD beneficiary income changed from "\$9,000" to "\$10,000" and married persons changed from "\$12,000" to "\$13,000".

Amended by R.1986 d.321, effective April 4, 1986.

See: 18 N.J.R. 1054(a), 18 N.J.R. 1594(b).

(c) added.

Amended by R.1990 d.614, effective December 17, 1990.

See: 22 N.J.R. 2218(a), 22 N.J.R. 3756(a).

In (b): increased income levels from \$10,000 to \$11,000 for single persons and from \$13,000 to \$14,000 for married persons.

Amended by R.1991 d.563, effective November 18, 1991.

See: 23 N.J.R. 2623(a), 23 N.J.R. 3514(a).

Changes made pursuant to P.L. 1991, c.84; N.J.A.C. cites referenced and retroactive eligibility.

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

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

Deleted biennial notification letter sent to beneficiaries.

Amended by R.1995 d.10, effective January 3, 1995.

See: 26 N.J.R. 3142(a), 27 N.J.R. 242(a).

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

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

In (b), deleted a former 3.

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

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

In the introductory paragraph of (b), substituted "The PAAD Program" for "DHSS" and deleted the last two sentences; in (b)1, substituted "not requested to submit a renewal application for any given year shall" for "eligible for the biennial process will" and deleted "second" following "card for the".

10:167-5.4 Exceptions from normal standards

(a) There may be exceptional cases where the processing of an eligibility application cannot be completed within a normal 30-day period. Where substantially reliable evidence either of eligibility or ineligibility is still lacking; the application shall be continued in pending status. In each such case, however, the Department shall be prepared to demonstrate that the delay resulted from one of the following:

1. Circumstances wholly within the applicant's control; or

2. A determination to afford to an applicant whose proof of eligibility has been inconclusive, further opportunity to develop additional evidence of eligibility before final action on this application; or

3. An administrative or other emergency that could not reasonably have been avoided; or

4. Circumstances wholly outside the control of both the applicant and the PAAD program.

(b) A PAAD applicant, who meets all the PAAD eligibility criteria, can reasonably expect to receive his/her PAAD temporary eligibility card within 30 days from the date that a complete and valid Eligibility Application is received by PAAD.

(c) In the event that mailing of the eligibility card is delayed, the PAAD program shall reimburse the PAAD beneficiary directly for the cost (minus a PAAD co-payment per prescription) of all prescription drugs purchased by the

person on or after the 30th day after his or her properly completed application was received by the PAAD program, subject to the following conditions:

1. The eligibility application renewal application must have been fully and properly completed.
2. The PAAD beneficiary must submit a prescription claim form and proof of purchase for each eligible prescription to the PAAD program. The claim form must be completed by a participating New Jersey pharmacy, or by a licensed mail order pharmacy service program where the prescription is delivered to a New Jersey address.
3. No direct reimbursement will be made for any drugs purchased after the date when the beneficiary receives his eligibility identification card.

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.1993 d.368, effective July 19, 1993.

See: 24 N.J.R. 4329(a), 25 N.J.R. 3216(a).

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

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

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

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

In the introductory paragraph of (c), substituted "shall" for "will", "PAAD" for "\$5.00" and "his or her" for "his/her".

10:167-5.5 Agency controls

(a) The Commissioner shall establish operating policies within the Department to expedite the processing of applications and assure the maximum possible compliance with the standards set forth in this manual.

(b) The Department has the responsibility for reviewing a statistically valid representative sample of PAAD cases to assure that beneficiary eligibility is determined consistent with State law and eligibility regulations. A quality control review, of sample cases selected on a random basis, includes:

1. Analysis of the beneficiary's case record, including the application, which is maintained by the PAAD Program; and
2. Verification of eligibility factors and third party liability information through collateral contacts.

(c) The Department has the responsibility for monitoring providers participating in the PAAD program, verifying that claims submitted to the program by such providers are in compliance with program regulations, and investigating PAAD beneficiaries in matters involving potential fraud and/or abuse.

(d) The Department shall, as appropriate, recover benefits incorrectly paid on behalf of a PAAD beneficiary.

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

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

In (d), deleted "correctly or" following "benefits".

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

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

In (b)1, substituted "Program; and" for "Bureau;"; deleted former (b)2 and recodified former (b)3 as (b)2.

10:167-5.6 Responsibilities in the application renewal process

(a) Pursuant to statutory authority, the Department establishes procedures on the application process consistent with law and supervises the operation with the policy and procedures so established.

(b) The Pharmaceutical Assistance to the Aged and Disabled Program has responsibility in the application process to:

1. Explain the purposes and eligibility requirements of the program and indicate the applicant's rights and responsibilities under its provisions;
2. Process applications and reapplications;
3. Issue eligibility cards to eligible persons and to notify ineligible persons promptly;
4. Automatically mail reapplication forms approximately four months prior to the eligibility expiration date;
5. Microfilm or electronically scan the eligibility application and supporting documents and retain the microfilm or electronic copy for audit purposes; and
6. Gather information to determine eligibility for Life-line programs.

(c) The applicant or beneficiary has the responsibility to:

1. Complete the PAAD eligibility application/renewal application form(s) legibly and accurately:
 - i. Answering all questions fully;
 - ii. Presenting all necessary evidentiary documents, including a copy of any third party health insurance cards and/or Medicare prescription benefits coverage cards;
 - iii. Reading the certification and authorization statement;
 - iv. Signing or marking the application or renewal application;
 - v. Obtaining the signature or mark of the spouse (if married) and the signature of the preparer (if applicable) on the application or renewal application.
2. Assist the Department in securing evidence that corroborates his statements when necessary.
3. Agree to a review by the Department or its agent, if randomly selected for review. PAAD eligibility may be terminated if the beneficiary refuses to cooperate with a quality control request.

4. Assign benefits to the State of New Jersey when prescription drug costs are covered in part by any other plan of assistance or insurance.

5. Reapply for eligibility on forms mailed by the Department, at least 45 days prior to his/her eligibility expiration date, if he/she wishes to renew PAAD eligibility.

6. If the application mailed by the PAAD Program is lost in the mail, misplaced or not received due to the applicant's change of address, it is the applicant's responsibility to contact the PAAD Program for a new application;

7. If the applicant does not wish the PAAD Program to act as his or her "authorized representative" for the purpose of coordinating Medicare and PAAD benefits, it is the applicant's responsibility to file a written "opt-out" letter with the program;

8. If requested, answer all questions and provide all information necessary to enroll the applicant in the Medicare Part D low income subsidy; and

9. If eligible, the applicant shall enroll in the Medicare Part D low income subsidy or permit the PAAD Program to enroll the applicant in the low income subsidy.

(d) The beneficiary has the responsibility to:

1. Notify PAAD whenever any one of the following occurs:

- i. His or her marital status changes.
- ii. He or she moves anywhere within the State of New Jersey, in which case, he or she shall submit proof of new address.

2. Return his or her eligibility card to PAAD whenever becoming ineligible due to one of the following:

- i. He/she moves out of the State of New Jersey.
- ii. He/she becomes eligible for Medicaid or any other plan of assistance or insurance that wholly covers pharmaceutical services.
- iii. His/her or their annual income increases to an amount which exceeds the legal limit.
- iv. He/she was determined eligible based on his/her disability and he/she stops receiving Social Security Disability benefits.

v. When requested by PAAD because required information to confirm eligibility was not submitted, or scheduled recovery payments are in arrears.

3. Repay the State of New Jersey, upon request, for the cost of benefits incorrectly paid on his or her behalf. Failure to fully repay the State for incorrectly paid benefits could cause the suspension of his or her PAAD benefits in

the future, as well as possible withholding of all or some of his or her rebates or refunds which may be due him or her from the State of New Jersey.

As amended, R.1981 d.332, effective September 10, 1981.

See: 13 N.J.R. 432(a), 13 N.J.R. 580(c).

(d): delete i-iii; renumber iv and v as i and ii; renumber (d)2 as (d)3 and add new text for (d)2.

Amended by R.1985 d.259, effective May 20, 1985.

See: 17 N.J.R. 367(a), 17 N.J.R. 1318(a).

Section substantially amended.

Amended by R.1991 d.563, effective November 18, 1991.

See: 23 N.J.R. 2623(a), 23 N.J.R. 3514(a).

Reference to "beneficiary" added at (c).

Amended by R.1993 d.368, effective July 19, 1993.

See: 24 N.J.R. 4329(a), 25 N.J.R. 3216(a).

Amended by R.1995 d.10, effective January 3, 1995.

See: 26 N.J.R. 3142(a), 27 N.J.R. 242(a).

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

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

In (b), substituted a reference to eligibility cards for a reference to temporary eligibility cards in 3, deleted a former 4, recodified former 5 and 6 as 4 and 5, and added a new 6; in (c), deleted "within 60 days after the expiration date" at the end of 7; and in (d), added ", in which case, he or she shall submit proof of new address" at the end of iii, and substituted a reference to the State of New Jersey for a reference to the Division of Taxation at the end of 3.

Amended by R.2004 d.459, effective December 20, 2004.

See: 36 N.J.R. 3619(a), 36 N.J.R. 5682(b).

In (c), rewrote iii, added 8.

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

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

In (b)5, inserted "or electronically scan the", "the" preceding "microfilm", and "or electronic copy"; deleted former (c)6; recodified former (c)7 and (c)8 as (c)6 and (c)7; in (c)6, substituted "the PAAD Program" for "PAAD" twice and deleted "and" from the end; in (c)7, substituted "Program" for "program" and substituted a semicolon for the period at the end; and added new (c)8 and (c)9.

10:167-5.7 Combined application for PAAD/Lifeline

(a) There shall be only one application for those beneficiaries who apply for both PAAD and Lifeline.

1. A beneficiary may file one application for both programs on the same form.

2. If an applicant wishes to apply only for Lifeline, he or she shall still use the AP-2 form. (See N.J.A.C. 10:167D-4.8).

3. On reapplication for Lifeline, the applicant shall complete an AP-12 renewal form.

(b) Beneficiaries who apply for PAAD shall follow the procedures and meet the qualifications of the program in this chapter.

(c) Beneficiaries who apply for Lifeline will follow the procedures and meet the qualifications of the program in N.J.A.C. 10:167D.

New Rule, R.1996 d.581, effective December 16, 1996.

See: 28 N.J.R. 3499(a), 28 N.J.R. 5174(a).

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

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

In (a), substituted a reference to the AP-2 form for a reference to the LL-1 form in 2, and added 3.

SUBCHAPTER 6. ELIGIBILITY REQUIREMENTS

Case Notes

See for historical purposes Atty.Gen.F.O.1978, No. 3 (then existing regulation N.J.A.C. 10:69A-4.3 declared invalid).

10:167-6.1 Age

(a) To be eligible for PAAD, the applicant shall be 65 years of age or older or shall be under 65 and over 18 years of age and receive Social Security Title II disability benefits. Individuals under age 65 who receive disability benefits on behalf of someone other than themselves are ineligible. The applicant shall be able to document his or her age upon request by the Department. The Department will require that the applicant submit a photocopy of his or her certificate or other acceptable proof of age if over 65 years of age.

(b) The following are acceptable proofs of age:

1. Primary proof: The applicant is required to submit a photocopy of one of the following documents:

- i. Birth certificate;
- ii. Baptismal certificate;
- iii. Bris certificate;
- iv. Social Security records verifying age (can be obtained from local security office);
- v. Railroad retirement letter (can be obtained from Railroad Retirement Board).

2. Secondary proofs: If the applicant cannot supply one of the documents listed above, copies of any two of the following documents are acceptable:

- i. Insurance policy;
- ii. Driver's license;
- iii. School record;
- iv. State or Federal census record;
- v. Church record of Baptism (age five or after);
- vi. Confirmation certificate;
- vii. Marriage record;
- viii. Employment record;
- ix. Union record;
- x. Military record;
- xi. Medicare card;
- xii. Delayed birth certificate;
- xiii. Applicant's child's birth certificate;
- xiv. Physician's or midwife's record of applicant's birth;

- xv. Immigration record;
- xvi. Naturalization record;
- xvii. Passport.

(c) If under age 65, the following are acceptable proofs of disability:

1. A copy of a Social Security award certificate issued in the last six months.
2. A Social Security Form or record.
3. A document issued by Social Security that establishes Medicare eligibility. The document must be dated within six months prior to the date of application.

Amended by R.1985 d.259, effective May 20, 1985.

See: 17 N.J.R. 367(a), 17 N.J.R. 1318(b).

Substantially amended.

Amended by R.1988 d.211, effective May 16, 1988.

See: 20 N.J.R. 369(a), 20 N.J.R. 1106(a).

Added text to (b)5 "letter (can be obtained from Railroad Retirement Board)".

Amended by R.1990 d.614, effective December 17, 1990.

See: 22 N.J.R. 2218(a), 22 N.J.R. 3956(a).

In (a): added sentence regarding ineligibility of those under 65 who receive disability benefits on behalf of someone other than themselves. Stylistic revisions to text.

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

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

In (b)1, substituted a reference to Social Security records verifying age for a reference to Social Security form No. 2458 in iv, and deleted a former vi; in (b)2, deleted a former v, recodified former vi through xi as v through x, inserted a new xi, deleted a former xii, and recodified former xiii through xviii as xii through xvii; and in (c), rewrote 2, and added 3.

10:167-6.2 Income standards

(a) Any single permanent resident of New Jersey who is 65 years of age or over or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have an annual income of less than \$26,575 to be eligible for PAAD.

(b) Any married permanent resident of New Jersey who is 65 years of age or over or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have a combined (applicant and spouse) annual income of less than \$32,582 to be eligible for PAAD.

1. An applicant and spouse shall be considered separate and eligibility determined under the single income standard when each maintains a separate residence and the applicant does not have access to the spouse's income.

i. Any support payment received by the applicant for the sole benefit of the applicant shall be considered as income for PAAD eligibility purposes.

2. An applicant and spouse may be considered separated when the spouse has been institutionalized in a long-term facility, either skilled or intermediate, or in a State or county psychiatric hospital at least 30 consecutive days prior to application.

i. PAAD shall consider the applicant and spouse separated only when doing so is more favorable to the applicant for PAAD (for example, when the income of an applicant and his institutionalized spouse is combined at \$25,060, the applicant is ineligible for PAAD, but if the applicant and spouse are considered separated, the applicant could be eligible for PAAD under the single income standard. If the institutionalized spouse was not covered by Medicaid, the spouse could become eligible under the single income standard).

(c) All income, from whatever source derived, is considered in determining eligibility for the purpose of PAAD. Jointly owned income sources, will be allocated according to degree of ownership.

1. All income, taxable and nontaxable, is to be included. Examples of possible sources of income (gross amounts unless otherwise noted) are as follows:

i. Social Security benefits paid to or on behalf of the applicant;

ii. Veterans benefits;

iii. Disability benefits, whether public or private;

iv. Salaries;

v. Wages;

vi. Bonuses;

vii. Commissions;

viii. Fees;

ix. Dividends;

x. Interest taxable and nontaxable;

xi. Capital gains;

xii. Royalties;

xiii. Bequests and death benefits;

xiv. Support payments;

xv. Unemployment benefits;

xvi. Pensions and black lung benefits;

xvii. Annuities (contributory and non-contributory, qualified and nonqualified);

xviii. Retirement benefits including distribution from Individual Retirement Arrangements (IRAs) (Traditional, Simple, Roth, Educational) and benefit payments from foreign countries;

xix. Business income (net);

xx. Fair market value of prizes and awards.

xxi. Gambling and lottery winnings; and

xxii. Rental income (net after expenses).

2. Sources of income which are excluded in considering eligibility for PAAD are as follows:

i. Benefit amounts received under the New Jersey State Lifeline Credit Program/Tenants Lifeline Assistance Program;

ii. Benefits received under New Jersey State Homestead Rebates;

iii. Proceeds from spouse's life insurance;

iv. Capital gains of up to \$250,000 for a single person or up to \$500,000 for a married couple on the sale of a main home which is also excluded from income taxation by IRS and the New Jersey Division of Taxation;

v. Stipends from the Volunteers to Service in America (VISTA), Foster Grandparents programs, Workforce 55+ program and programs under Title V of the Older Americans Act of 1965;

vi. Agent Orange payments;

vii. Reparation payments to Japanese Americans by the Federal Government pursuant to sections 105 and 106 of the Civil Liberties Act of 1988, P.L. 100-383 (50 U.S.C. App. 1989b-4 and 1989b-5);

viii. Rewards involving health care fraud or abuse which apply to N.J.A.C. 10:49-13.4;

ix. Holocaust reparations;

x. Proceeds from viatical settlements;

xi. Proceeds received by the beneficiary of a Special Needs Trust (see N.J.A.C. 10:167-2.2 for provisions);

xii. Rollovers from one tax deferred financial instrument (pension, annuity, IRA, insurance contract or other retirement benefits) to another tax deferred financial instrument;

xiii. 1035 Tax Free Exchanges of a policy or contract handled between two insurance companies; and

xiv. An insurance policyholder's original contributions if Demutualization of the policy occurs (in that case, only the earnings on the policy would be counted);

(d) The applicant must be able to document the amounts reported upon request by the Department, and will be required to submit photocopies of his/her Federal, State and/or City income tax return and other acceptance evidence.

(e) PAAD eligibility is conferred based upon annual income for the current calendar year, which is estimated at the time of application. Previous year income information is used as a gauge and supplements estimates of current income to determine current eligibility. However, if previous year income exceeds the standard, but current year income is expected to fall within legal limits, an initial applicant may estimate current year income for the purpose of establishing PAAD eligibility.

(f) Since PAAD eligibility is based upon actual annual income, if the actual income for the current calendar year exceeds the PAAD income standard, the person will become ineligible for the entire calendar year and shall be required to repay benefits paid for all prescriptions and Lifeline benefits from January 1 through December 31 of the calendar year.

(g) Upon renewal of eligibility, all re-applicants must submit previous year income information to substantiate previous estimates. Requests by re-applicants to use anticipated income, as the basis for eligibility, when previous year income exceeds the PAAD standard, will be reviewed individually.

(h) The PAAD program shall take necessary action to recover the full amount of payments made on behalf of beneficiaries during an ineligible period, when appropriate.

(i) PAAD beneficiaries are required to notify the PAAD program immediately if their current year income exceeds the PAAD income standard.

(j) Applicants who combine their income by filing joint Federal and/or State income tax returns, must combine their income for PAAD eligibility purposes for the same time period and their eligibility determination shall be based on the joint income standard, except when (b)2 above applies.

(k) Medical or other expenses are not considered or deducted from gross income for PAAD eligibility purposes.

(l) Net losses in one income category shall not be used to offset income in another category.

(m) Beginning January 1, 1996 and annually thereafter, the income eligibility limits shall increase by the amount of the maximum Social Security benefit cost-of-living adjustment for that year for single and married persons, respectively, in accordance with 42 U.S.C. § 415(i)(2)(D), incorporated herein by reference. The Commission will provide notice of the new income limits annually by publication in the New Jersey Register.

(n) If requested, applicants shall provide all income and asset information necessary to apply for the Medicare Part D Low Income Subsidy, pursuant to 20 CFR Part 418, Subpart D, and 42 CFR Part 423, which are incorporated herein by reference, as amended and supplemented.

1. The PAAD Program shall use the information to apply on behalf of the PAAD applicant for the low income subsidy by completing the Social Security Administration SSA-1020, on-line application form at www.socialsecurity.gov.

2. The additional income and asset information, required for the low income subsidy application and not required by (a) through (m) above shall not be used in determining PAAD eligibility, but shall only be used to determine eligibility for the low income subsidy.

3. In addition to the income and asset information required by N.J.A.C. 10:167-6.1 through 6.9 to determine eligibility, applicants shall provide the following information necessary for the Social Security Administration to determine eligibility for the low income subsidy:

- i. Bank accounts (checking, savings, and certificates of deposit);
- ii. Stocks;
- iii. Bonds;
- iv. Savings bonds;
- v. Mutual funds;
- vi. Individual retirement accounts or other similar investments;
- vii. Any other cash at home or held anywhere else;
- viii. Life insurance policies with a total face value of \$1,500 or more;
- ix. Real estate other than your home and the property on which it is located;
- x. Help that you (or your spouse, if married and living together) receive to pay for any of the following household expenses – food, mortgage, rent, heating fuel or gas, electricity, water and property taxes; and
- xi. The number of relatives who live with you and your spouse and depend on you or your spouse to provide at least one-half of their financial support.

Amended by R.1982 d.198, effective June 21, 1982.

See: 14 N.J.R. 321(b), 14 N.J.R. 659(a).

Section substantially amended.

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

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

Single permanent resident income changed from "\$12,000" to "\$13,500"; married from "\$15,000" to "\$16,250".

Amended by R.1988 d.174, effective April 18, 1988.

See: 19 N.J.R. 2375(a), 20 N.J.R. 902(a).

Changed "\$13,250 to \$13,650" and "\$16,250 to \$16,750".

Amended by R.1990 d.182, effective March 19, 1990.

See: 21 N.J.R. 3047(a), 22 N.J.R. 953(a).

Added (c)2iv. regarding the one-time capital gain.

Amended by R.1990 d.614, effective December 17, 1990.

See: 22 N.J.R. 2218(a), 22 N.J.R. 3956(a).

In (c)2: added v.-vi.

Amended by R.1991 d.563, effective November 18, 1991.

See: 23 N.J.R. 2623(a), 23 N.J.R. 3514(a).

Income eligibility revised upwards.

Amended by R.1993 d.608, effective December 6, 1993.

See: 25 N.J.R. 3407(a), 25 N.J.R. 5528(b).

Amended by R.1994 d.191, effective April 18, 1994.

See: 25 N.J.R. 5750(a), 26 N.J.R. 1657(a).

Amended by R.1995 d.10, effective January 3, 1995.

See: 26 N.J.R. 3142(a), 27 N.J.R. 242(a).

Amended by R.1996 d.7, effective January 2, 1996.

See: 27 N.J.R. 3541(a), 28 N.J.R. 184(c).

In (a) and (b) increased income limits, and added (m).

Administrative Change.

See: 28 N.J.R. 3597(a).

In (a) and (b) increased income limits.

Administrative change.

See: 29 N.J.R. 2562(a).

In (a), substituted "\$17,550" for "\$17,056"; and in (b), substituted "\$21,519" for "\$20,913".

Administrative change.

See: 30 N.J.R. 68(a)

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

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

Rewrote (b)1; in (b)2, substituted "may" for "shall" following "spouse" in the introductory paragraph and added i; in (c)1, inserted new i through iii, recodified former i through xvii as iv through xx, and deleted "(including Social Security)" at the end of new xvi; and in (f), substituted "benefits paid for all prescriptions and Lifeline benefits" for "for all prescriptions" following "repay".

Administrative change.

See: 31 N.J.R. 54(b).

Administrative change.

See: 32 N.J.R. 59(a).

Administrative change.

See: 33 N.J.R. 554(b).

In (a), substituted "\$19,238" for "\$18,587" and in (b), substituted "\$23,589" for "\$22,791".

Administrative change.

See: 34 N.J.R. 935(a).

Administrative change.

See: 35 N.J.R. 1115(a).

Administrative correction.

See: 35 N.J.R. 5619(b).

Amended by R.2004 d.349, effective September 20, 2004.

See: 36 N.J.R. 1859(a), 36 N.J.R. 4311(a).

In (b), inserted "for the sole benefit of the applicant" preceding "shall be considered" in 1i and substituted "\$ 25,060" for "\$ 24,000" in 2i; rewrote (c); in (m), substituted "adjustment" for "increase" following "cost-of-living".

Administrative change.

See: 36 N.J.R. 5683(a).

Administrative change.

See: 37 N.J.R. 5001(a).

Administrative change.

See: 38 N.J.R. 5362(a).

Administrative change.

See: 40 N.J.R. 182(a), 6966(a).

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

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

Added (n).**Administrative change.**

See: 43 N.J.R. 3365(a).

Administrative change.

See: 45 N.J.R. 33(a).

Administrative change.

See: 46 N.J.R. 78(a).

Administrative change.

See: 47 N.J.R. 485(a).

Case Notes

Pharmaceutical Assistance to the Aged and Disabled regulations limiting eligibility to persons actually receiving Social Security disability benefits upheld against constitutional challenge as having a rational state purpose in being necessary for the financial viability of the program. *Barone v. Dept. of Human Services*, 210 N.J.Super. 276, 509 A.2d 786 (App.Div.1986) affirmed 107 N.J. 355, 526 A.2d 1055.

Pharmaceutical assistance beneficiary must repay state if combined income over minimum eligibility because of "in kind" services rendered. *R.S. v. Division of Medical Assistance and Health Services*, 97 N.J.A.R.2d (HLT) 39.

Inclusion of applicants' Individual Retirement Account as income was appropriate. *S. K. v. New Jersey Division of Medical Assistance and Health Services, Pharmaceutical Assistance to the Aged and Disabled*, 94 N.J.A.R.2d (PAA) 1.

10:167-6.3 Citizenship

A person shall not be required to be a citizen of the United States in order to be eligible for PAAD.

10:167-6.4 Residence

(a) The statute provides that "any . . . resident of this State . . . shall be eligible for PAAD. 'Resident' means one legally domiciled within the State for a period of 30 days immediately preceding the date of application for inclusion in the program. Mere seasonal or temporary residence within the State, of whatever duration, does not constitute domicile. Absence from this State for a period of 12 months is prima facie evidence of abandonment of domicile. The burden of establishing legal domicile within the State is upon the applicant."

1. Interpretation: The term resident shall be interpreted to mean a person having his customary place of abode in New Jersey. The fact that an individual was or may have been motivated to move to New Jersey because of the availability of medical facilities does not, of itself, justify a finding that he has not established a residence in this State; however, such inquiry need not be made if an individual has been physically present in New Jersey for a period exceeding three months.

2. The applicant must be able to substantiate residence upon request by the Department and is required to submit photocopies of two documents showing evidence of current residence at the time of initial application.

3. The following are examples of sources of evidence of residence:

- i. Motor vehicle records (for example, valid driver's license);
- ii. Landlord's records and rent receipts;
- iii. Public utility records and receipts (for example, electric bill);
- iv. Personal property assessment records;
- v. Records of business or professional people, such as doctors, department stores, etc.;
- vi. Post office records;
- vii. Records of social agencies, public or private;
- viii. Employment records; and
- ix. Social Security records.

4. Determination as to continued New Jersey residence of a person absent from this State shall be based upon contact with the applicant by a representative of the Department.

5. In reaching a decision as to continuing New Jersey residence of an absentee, the issue is whether the individual intends to return to New Jersey or remain indefinitely in the other jurisdiction. If a beneficiary leaves New Jersey with the intent to establish a place of abode elsewhere, he becomes ineligible under the PAAD program and must notify the Pharmaceutical Assistance to the Aged and Disabled program of the address and return the PAAD eligibility card.

Amended by R.1985 d.259, effective May 20, 1985.

See: 17 N.J.R. 367(a), 17 N.J.R. 1318(b).

Substituted "within" for "with".

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

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

3.ii deleted.

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

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

In (a), deleted "and reapplication" at the end of 2.

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)3i and (a)3iii, substituted "for example" for "e.g."; in (a)3viii, substituted "; and" for the period at the end; and added (a)3ix.

10:167-6.5 Recipient of other assistance and pharmaceutical coverage

(a) The State statute provides that any person shall be ineligible for PAAD if he/she is otherwise qualified for assistance under the Act of which the PAAD Act is a supplement (Chapter 413, Laws of 1968). This is interpreted to mean that a State resident 65 years of age or older cannot be eligible for PAAD when receiving Medicaid benefits.

(b) The State statute further provides that any otherwise eligible person whose prescription drug costs are wholly covered by any other plan of assistance or insurance shall be ineligible for PAAD.

(c) A PAAD applicant shall supply the PAAD Program with sufficient information for PAAD to apply for Medicare Part D coverage on behalf of the applicant.

(d) The applicant, having provided all the necessary information to the PAAD Program, shall be enrolled in a Medicare Part D plan, except in the following cases:

1. The applicant is in an employer prescription drug plan, where the employer accepts a subsidy from Medicare for continued coverage of the employee/retiree; or
2. The applicant is not eligible under Medicare Part D.

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

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

Added (c) and (d).

10:167-6.6 PAAD eligibility application and renewal application forms

(a) The Pharmaceutical Assistance to the Aged and Disabled Eligibility Application (AP-2) is the only acceptance form to be utilized in determining the applicant's initial eligibility for PAAD. These forms are available to applicants in central and local offices and other convenient locations throughout the State, on the Department's website at www.state.nj.us/health/seniorbenefits/forms.shtml, and by writing to the New Jersey Department of Human Services, Pharmaceutical Assistance to the Aged and Disabled (PAAD), PO Box 715, Trenton, NJ 08625-0715.

(b) The only acceptable form to be utilized in determining the beneficiary's continuation of eligibility will be the PAAD Eligibility Renewal Application Form (AP-12). This form is

automatically mailed to the beneficiary approximately four months prior to the eligibility expiration date.

(c) The application forms specified by this section shall contain fields for the submission of the information required by N.J.A.C. 10:167-6.1 through 6.9 to determine eligibility, and fields for applicants to approve the release of information in accordance with N.J.A.C. 10:167-6.11.

Amended by R.1985 d.259, effective May 20, 1985.

See: 17 N.J.R. 367(a), 17 N.J.R. 1318(b).

Substituted "four months" for "90 days".

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), inserted ", on the Department's website at www.state.nj.us/health/seniorbenefits/forms.shtml, and by writing to the New Jersey Department of Health and Senior Services, Pharmaceutical Assistance to the Aged and Disabled (PAAD), PO Box 715, Trenton, NJ 08625-0715"; and added (c).

Amended by R.2011 d.248, effective October 3, 2011.

See: 43 N.J.R. 360(a), 43 N.J.R. 2596(a).

In (c), inserted ", and fields for applicants to approve the release of information in accordance with N.J.A.C. 8:83-6.11".

10:167-6.7 Social Security account number

(a) Each applicant for PAAD benefits must include his or her Social Security Account Number (SSAN) on the application/reapplication form. The SSAN is a unique and verifiable number which is utilized to differentiate between persons with the same name. Married persons must also indicate the SSAN of their spouse.

(b) In the event that the applicant does not have a SSAN, a unique identifying number will be assigned by the PAAD program. This number will be used throughout the beneficiary's PAAD eligibility.

(c) Each applicant shall include a Medicare Health Insurance Claim number on the application/reapplication, if the applicant has been assigned one.

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

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

Added (c).

10:167-6.8 Certification

The applicant for PAAD benefits must certify that all the answers to the questions and items on the application/renewal application form are true and accurate to the best of his/her knowledge. This certification must be dated, signed or marked by the applicant and spouse (if married), and the preparer of the form (if other than the applicant), before the application/renewal application can be processed.

10:167-6.9 Authorization

(a) By signing or marking the certification and authorization statement on an application or a renewal application form, an applicant or a reapplicant authorizes:

1. The Department to serve as the authorized representative of the applicant or reapplicant;

2. The Department to verify any information on the form by contacting the Social Security Administration, the Internal Revenue Service, the New Jersey Division of Taxation, employers and others as the need arises;

3. Assignment of benefits to the State of New Jersey if he/she or his/her spouse has any other plan of assistance or insurance that covers, at least in part, the cost of prescription drugs; and

4. Prescribing practitioners to release information concerning prescriptions which have been paid by the PAAD program, to the Department or any law enforcement authority of this State charged with the investigation or prosecution of violations of the criminal provisions of the "Pharmaceutical Assistance to the Aged and Disabled Act" or the criminal laws of this State.

Amended by R.1984 d.617, effective January 21, 1985.

See: 16 N.J.R. 2050(a), 17 N.J.R. 201(b).

(a)4 added.

Amended by R.2006 d.431, effective December 18, 2006.

See: 38 N.J.R. 1124(a), 38 N.J.R. 5360(a).

Rewrote introductory paragraph of (a); added (a)1; and recodified former (a)1 through (a)4 as (a)2 through (a)5.

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

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

Deleted former (a)3, and recodified former (a)4 and (a)5 as (a)3 and (a)4.

10:167-6.10 Eligibility period

(a) A PAAD eligibility card is effective for the dates indicated on the card. The PAAD beneficiary shall renew his or her eligibility in accordance with the provisions of N.J.A.C. 10:167-5.3(b). In that case, he or she would receive an updated eligibility card automatically for the second year, and would complete a renewal application every two years. Beneficiaries who are subject to the two year renewal provision will have their eligibility card renewed automatically for one additional year.

(b) Approximately four months prior to his or her expiration date, PAAD will notify the beneficiary if he or she must complete a renewal form. Renewal applications must be returned to the PAAD Program by the beneficiary at least 45 days prior to the expiration date to ensure continuous coverage.

Amended by R.1985 d.259, effective May 20, 1985.

See: 17 N.J.R. 367(a), 17 N.J.R. 1318(b).

Old text deleted and new text substituted.

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

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

Income changed from "\$9,000" to "\$10,000" for single and married raised from "\$12,000" to "\$13,000".

Amended by R.1988 d.174, effective April 18, 1988.

See: 19 N.J.R. 2375(a), 20 N.J.R. 902(a).

Substituted "expiration" for "renewal".

Amended by R.1990 d.614, effective December 17, 1990.

See: 22 N.J.R. 2218(a), 22 N.J.R. 3956(a).

In (a): increased income level from \$10,000 to \$11,000 for single persons and from \$13,000 to \$14,000 for married persons.

Amended by R.1991 d.563, effective November 18, 1991.

See: 23 N.J.R. 2623(a), 23 N.J.R. 3514(a).

References to eligibility effective dates revised.

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

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

In (a), substituted "the dates indicated on the card" for "one year" at the end of the first sentence; and in (b), deleted "he/she is eligible for biennial eligibility or if" following "beneficiary if" in the first sentence.

10:167-6.11 Confidentiality and disclosure of information

(a) All personally identifiable information regarding applicants or beneficiaries obtained or maintained under this program shall be confidential and shall not be released without the written consent of the applicant or beneficiary or their authorized agent.

(b) Disclosure of information without the consent of the applicant, beneficiary or their authorized agent shall be limited to purposes directly connected with the administration of the program pursuant to State law and regulations.

(c) The prohibition of (a) above against unauthorized disclosure shall not be construed to prevent:

1. The release of statistical or summary data or information in which applicants or beneficiaries cannot be identified.

2. The release to the Attorney General or other legal representative of this State of information or files relating to the claim of any applicant, beneficiary or their authorized agent challenging the program's statute, regulations or a determination made pursuant thereto, or against whom an action or proceeding for the recovery of incorrectly paid benefits has been instituted.

3. The release of information to the program's contractors, the Lifeline Credit Program, Tenant Lifeline Assistance Program, Social Security Administration, the Division of Medical Assistance and Health Services and other plans of assistance or insurance that covers the cost of prescription drugs in whole or in part.

4. The release of information or files to the State Treasurer or other governmental agency or to their duly authorized representatives, for an audit, review of expenditures or similar activity authorized by law.

5. The release of information or files to any law enforcement authority of this State charged with the investigation or prosecution of violations of the criminal provisions of the "Pharmaceutical Assistance to the Aged and Disabled Act" or the criminal laws of this State.

6. The release of information to the Department and participating licensed veterinarians for the purpose of verifying eligibility for benefits under the Animal Population Control Program.

7. The release of information or files to county welfare agencies for the purpose of determining eligibility for Medicaid or Food Stamp Program benefits or for subsequent verification of Medicaid eligibility.

8. The release of information or files to the Division of Motor Vehicles in the Department of Law and Public Safety for the implementation of the Fair Automobile Insurance Act of 1990 (P.L. 1990, c.8).

9. The release of information or files to the beneficiary's telephone or telecommunications carrier, utility company, the Department of Community Affairs, the Department of the Treasury or the Board of Public Utilities for the purpose of determining eligibility for the Lifeline Telecommunication program, the Low Income Home Energy Assistance Program, the Universal Service Fund or for the distribution of Lifeline Telecommunication, Low Income Home Energy Assistance Program and Universal Service Fund benefits.

10. The release of beneficiary information or files to Medicare endorsed discount plans, Medicare Advantage Plans, Medicare Prescription Drug Plans or the Center for Medicare and Medicaid Services for the purpose of coordination of benefits between the Medicare Drug Plan and PAAD.

11. The release of information to the Federal Social Security Administration for the purposes of applying, on behalf of the PAAD applicant/reapplicant, for the Medicare Part D low income subsidy.

New Rule, R.1984 d.269, effective July 2, 1984.

See: 16 N.J.R. 823(a), 16 N.J.R. 1797(a).

Amended by R.1985 d.259, effective May 20, 1985.

See: 17 N.J.R. 367(a), 17 N.J.R. 1318(b).

(c)7 added.

Amended by R.1991 d.454, effective September 3, 1991.

See: 23 N.J.R. 7(a), 23 N.J.R. 2637(b).

Added new (c)8 to rule text.

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

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

In (c), inserted a reference to the Division of Medical Assistance and Health Services in 3.

Amended by R.2003 d.102, effective March 3, 2003.

See: 34 N.J.R. 3455(a), 35 N.J.R. 1268(a).

Added (c)9.

Amended by R.2005 d.26, effective January 18, 2005.

See: 36 N.J.R. 2602(a), 37 N.J.R. 281(a).

In (c), added 10.

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

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

Added (c)11.

Amended by R.2011 d.248, effective October 3, 2011.

See: 43 N.J.R. 360(a), 43 N.J.R. 2596(a).

In (c)7, substituted "county welfare agencies" for "County Welfare Agencies", and inserted "or Food Stamp Program"; and rewrote (c)9.

10:167-6.12 Appeal process

(a) When PAAD determines that an application is ineligible for benefits, the applicant has the right to appeal the decision by submitting a written request for a fair hearing to Pharmaceutical Assistance to the Aged and Disabled, PO Box 715, Trenton, New Jersey 08625-0715, within 30 calendar days from the date of mailing of the notice of ineligibility. The document must clearly state the valid basis for such a request.

(b) PAAD will forward the hearing request, if determined to be a contested case, to the Office of Administrative Law which will schedule the hearing and notify all parties of the date, time and location of the hearing.

(c) The petitioner will have the burden of demonstrating that PAAD's determination deviates from the requirements and standards of the regulations and statute.

(d) When the PAAD beneficiary requests a fair hearing, he or she shall clearly indicate the existence of a disputed question of fact or law arising from the requirements and standards of the rules and statutes of the PAAD program. If the beneficiary fails to establish a contested case, the PAAD program shall deny the hearing request.

1. Hearings are not intended to be informational or to provide a forum for the expression of public sentiment on PAAD actions or policies.

New Rule, R.1993 d.368, effective July 19, 1993.

See: 24 N.J.R. 4329(a), 25 N.J.R. 3216(a).

Amended by R.1995 d.10, effective January 3, 1995.

See: 26 N.J.R. 3142(a), 27 N.J.R. 242(a).

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

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

In (a), extended the hearing request deadline from 20 calendar days to 30 calendar days from the notice mailing date; and in (b), inserted ", if determined to be a contested case," following "request".

SUBCHAPTER 7. RECOVERIES AND LIENS

10:167-7.1 Recoveries for benefits correctly paid

Pursuant to P.L. 1983, C. 371, no encumbrance or recovery of any kind shall be imposed or sought from the estate of a qualified applicant or an eligible person after his death because of assistance paid, or to be paid, on his behalf under the PAAD program, except for assistance incorrectly or illegally paid, or for third party liability recovery sought under the New Jersey Medical Assistance and Health Services Act (P.L. 1968, C. 413, codified as N.J.S.A. 30:4D-1 et seq.)

As amended, R.1982 d.147, effective May 3, 1982.

See: 14 N.J.R. 80(a), 14 N.J.R. 427(c).

Section substantially amended.

As amended, R.1984 d.571, effective December 16, 1984.

See: 16 N.J.R. 2051(a), 16 N.J.R. 3439(a).

Old section deleted and new section substituted.

10:167-7.2 Recoveries for benefits incorrectly paid

(a) As provided in N.J.S.A. 30:4D-1 et seq., the Department may take all necessary action to recover the cost of benefits incorrectly paid on behalf of a beneficiary.

1. The term "incorrect payment" includes, but is not limited to:

i. Payment made on behalf of a beneficiary whose drug costs are wholly covered by another source;

ii. Payment made on behalf of a beneficiary who is no longer eligible, or has been incorrectly determined to be eligible to receive benefits;

iii. Payment made as a result of fraud perpetrated by a beneficiary, his or her authorized agent and/or provider; and

iv. An unanticipated payment that makes a recipient ineligible for benefits, in which case the provisions of N.J.S.A. 30:4D-21.4 shall apply.

(b) The Department shall take all reasonable measures to ascertain the legal liability of third parties to pay for prescription drugs arising out of injury, disease, or disability, where it is known that a third party is or may be liable to pay all or part of the drugs of a beneficiary. Payment on behalf of an eligible individual shall not be withheld because of the liability of third parties, if third party resources are not currently available to pay the individual's expenses. The Department shall recover from any such third party the full amount of payments made. Upon request of the Director, the Attorney General may enforce such right, institute legal proceedings against the third party who is or may be liable for the payment for drugs, or intervene in any proceedings, in the name of the Commissioner, or in the name of the injured

person, his guardian, executor, administrator or other appropriate representative.

Amended by R.1993 d.368, effective July 19, 1993.

See: 24 N.J.R. 4329(a), 25 N.J.R. 3216(a).

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

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

In (a), inserted references to Lifeline benefits throughout the introductory paragraph.

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

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

In the introductory paragraph of (a), deleted the second and third sentences, in (a)1iii, substituted "his or her" for "his/her", and "; and" for the period at the end; and added (a)1iv.

10:167-7.3 Liens

Provisions for the application of liens shall be consistent with and conform to any provisions for liens as provided in N.J.S.A. 30:4D-1 et seq.

10:167-7.4 Penalties

Any person violating any provision of the PAAD Act shall be subject to the applicable civil and criminal penalties contained in the "New Jersey Medical Assistance and Health Services Act" (N.J.S.A. 30:4D-1 et seq.). In addition, any eligible person who violates any provision of the PAAD Act shall be subject to a suspension of their eligibility for one year for a first offense and permanent revocation of their eligibility for a second offense.