

**CHAPTER 83D****SENIOR GOLD PRESCRIPTION  
PROGRAM MANUAL****Authority**

P.L.2001, c.96.

**Source and Effective Date**

R.2001 d.428, effective November 19, 2001.  
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Chapter 83D, Senior Gold Prescription Program Manual, expires on November 19, 2006.

**Chapter Historical Note**

Chapter 83D, Senior Gold Prescription Program Manual, was adopted as emergency new rules by R.2001 d.201, effective May 18, 2001. See: 33 N.J.R. 1948(a). Chapter 83D, Senior Gold Prescription Program Manual, expired on July 17, 2001.

Chapter 83D, Senior Gold Prescription Program Manual, was adopted as new rules by R.2001 d.428, effective November 19, 2001. See: Source and Effective Date.

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**SUBCHAPTER 1. INTRODUCTION****8:83D-1.1 Purpose and intent**

(a) It is intended that the Senior Gold Prescription Discount Program shall extend assistance to certain persons whose level of income disqualifies them for benefits and medical assistance under the New Jersey Medical Assistance and Health Services Act and for prescription benefits under the Pharmaceutical Assistance to the Aged and Disabled (PAAD) Act, but who have significant needs for more affordable prescribed drugs.

(b) This manual has been developed as a statement of policy and procedures and addresses eligibility for the Senior Gold Prescription Discount Program.

**8:83D-1.2 Legal authority**

These rules are promulgated under the authority of the Senior Gold Prescription Discount Act, P.L. 2001, c.96.

**SUBCHAPTER 2. DEFINITIONS****8:83D-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 Senior Gold Prescription Benefits either personally or through an authorized agent.

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

"Beneficiary" means an individual who has been found eligible for Senior Gold Prescription 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 Senior Gold benefits eligibility.

"Commissioner" means the Commissioner of the Department of Health and Senior Services.

"Current year" means the calendar year in which a person applies or reapplies for Senior Gold benefits.

"Department" means the Department of Health and Senior Services.

"Expiration date" means the date when a beneficiary's Senior Gold benefits eligibility ends.

"Legend drug" means any approved drug product which by Federal law cannot be dispensed without a prescription and bears the statement of the label: "Caution: Federal law prohibits dispensing without a prescription," or the symbol "RX."

"Senior Gold co-pay" means the payment to the pharmacy by the eligible person that shall not be waived, discounted or rebated in whole or in part.

"Pharmaceutical assistance" means the payments authorized by the Department to a participating pharmacy on behalf of a Senior Gold 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.

"Prescription drug(s)" means all approved legend drugs, including any interchangeable drug products contained in the latest list approved and published by the Drug Utilization Review Council in conformance with the provisions of the "Prescription Drug Price and Quality Stabilization Act," and insulin, insulin syringes, insulin needles and certain diabetic testing materials when prescribed.

1. The term "legend prescription drugs" includes:

i. Any drug product which by Federal law cannot be dispensed unless ordered by a licensed prescriber;

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," or the symbol "RX";

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

iv. Diabetic testing materials, including blood glucose reagent strips which can be visually read, urine monitoring strips, tapes and tablets and bloodletting devices and lancets (electronic monitoring devices are not included); and

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

2. The term "prescription drugs" excludes cosmetic drugs as indicated at N.J.A.C. 8:83C-1.13 unless deemed to be medically necessary by a licensed prescriber.

"Previous year" means the calendar year preceding the year in which the person is applying or reapplied for Senior Gold benefits. For example, 2000 is the "previous year" when referring to an application which is dated between January 1, 2001 through December 31, 2001, inclusive. If a person who is required to submit a Federal, State and/or city income tax return applies for Senior Gold benefits 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 Senior Gold application.

"Program" means the Senior Gold Prescription Discount Program which was created as a result of the passage of the Senior Gold Prescription Discount Act, P.L. 2001, c.96.

"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, Pharmaceutical Assistance to the Aged and Disabled Program, and the Senior Gold Prescription Discount 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 the prescription drug and shall include the conditions set forth on page 111 of the 2002 New Jersey Appropriations Act, P.L. 2001, c.130.

"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 Senior Gold 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.)

"Senior Gold" means the Senior Gold Prescription Discount Program.

"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. 8:83D-2.2 for provisions).

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

Amended by R.2004 d.351, effective September 20, 2004.  
See: 36 N.J.R. 1865(a), 36 N.J.R. 4313(b).

Added "Special needs trust" and "Viatical settlement".

#### 8:83D-2.2 Special needs trust

(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; and

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.351, effective September 20, 2004.  
See: 36 N.J.R. 1865(a), 36 N.J.R. 4313(b).

### SUBCHAPTER 3. ADMINISTRATIVE ORGANIZATION

#### 8:83D-3.1 Department of Health and Senior Services

The Department is the administrative unit of the State government which has control over the administration of

Senior Gold. Under the terms of the Senior Gold Prescription Discount Act, this Department is responsible for the general policies governing administration of Senior Gold and for implementing the Senior Gold Prescription Discount Act through the issuance of regulations in accordance with the Administrative Procedure Act.

#### **8:83D-3.2 Division of Senior Benefits and Utilization Management**

The Division of Senior Benefits and Utilization Management is the administrative unit within the Department that processes applications, determines eligibility, answers inquiries, mails eligibility cards and performs other administrative functions for, or in conjunction with, the Department.

#### **8:83D-3.3 Senior Gold Prescription Discount Program**

The Senior Gold Prescription Discount Program in the Office of Support Services for the Aged within the Department, has the direct responsibility for the processing of eligibility applications from applicants.

### **SUBCHAPTER 4. SCOPE OF SERVICE**

#### **8:83D-4.1 Statutory limitations**

By statute, the Senior Gold Prescription Discount Program is limited to payment or reimbursement to pharmacies for the reasonable cost of prescription drugs for eligible persons which exceeds the co-payment.

#### **8:83D-4.2 Principles of reimbursement to participating pharmacies**

(a) In order to become an approved provider, 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.

(b) No reimbursement will be made to an unlicensed pharmacy or to a pharmacy located in another state or country.

(c) Reimbursement on behalf of Senior Gold beneficiaries will be made directly to the participating pharmacies and will be for the reasonable cost (as determined by the Commissioner) of the prescription drugs which exceeds the co-payment.

#### **8:83D-4.3 Amounts of reimbursement**

(a) The Program shall provide a payment to a pharmacy that is participating in the Program for the reasonable cost of one or more prescription drugs purchased by an eligible person who presents an identification card issued by the program in an amount that exceeds the co-payment paid by the eligible person.

(b) At the time of each purchase of a prescription drug, the eligible person shall pay a co-payment to the participating pharmacy that shall not be waived, discounted or rebated in whole or in part, and shall be equal to:

1. \$15.00 plus 50 percent of the remaining amount of the reasonable cost for the prescription drug, or the reasonable cost for the drug, whichever is less; or
2. \$15.00, or the reasonable cost for the drug, whichever is less, in the case of an eligible person who has incurred out-of-pocket expenditures, including co-payments and deductibles, for the purchase of prescription drugs, which are not reimbursable by any other plan of assistance or insurance and are credited to that person's account in the following amounts: \$2,000 annually for a single person and \$3,000 annually for a married couple. These amounts shall be incurred on or after the date that the person received proof of eligibility for the program from the Department.

#### **8:83D-4.4 Interchangeable drug products**

(a) Whenever any interchangeable drug product contained in the latest list approved and published by the Drug Utilization Review Council is available for the prescription written, the Program shall reimburse only for the reasonable cost of the interchangeable product less the Senior Gold co-payment unless the prescriber specifies that substitution is not permitted.

(b) For certain brand name products as specified at N.J.A.C. 10:51-1.5(b), the prescriber writes the statement "Brand Name Medically Necessary" on the prescription form.

1. If the prescriber fails to specify that substitution is not permissible, the Senior Gold beneficiary has two options:

- i. To purchase an interchangeable drug product which is equal to or less than the maximum allowable cost, at the Senior Gold co-payment; or
- ii. To purchase the prescribed drug product which is higher in cost than the maximum allowable cost and pay the difference between the two, in addition to the copayment.

(c) If the prescriber specifies on the prescription that substitution is not permissible, the Program will reimburse for the reasonable cost of the prescribed product less the Senior Gold co-payment.

#### **8:83D-4.5 Beneficiary co-payment**

(a) No direct payment to beneficiaries will be made under the Senior Gold Program except as noted in (b) below. The beneficiary must pay the pharmacy a non-refundable Senior Gold co-pay per prescription drug.

(b) In the event that a beneficiary receives his or her eligibility identification card later than 30 days from the date that his or her complete and valid eligibility application was received by the Program, he or she may be eligible to receive direct reimbursement for prescription drugs purchased.

## SUBCHAPTER 5. APPLICATION PROCESS

### 8:83D-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.

### 8:83D-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 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, or 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; or
5. A friend.

### 8:83D-5.3 Eligibility effective date

(a) The Senior Gold eligibility effective date for an initial Senior Gold applicant, who meets all the Senior Gold eligibility criteria, is the date when a valid and complete eligibility application is approved by the Program.

(b) The Department shall conduct periodic reassessments of the eligibility of Senior Gold beneficiaries. Generally, renewals of eligibility shall be conducted every year.

1. Beneficiaries are required to reapply annually and must submit a valid and completed renewal application 45 days prior to their expiration date to insure that their Senior Gold benefits continue uninterrupted; however, if beneficiaries are late in submitting their valid and completed renewal applications, but file a valid and completed renewal application within 90 days after the expiration date, their Senior Gold benefits will continue uninterrupted. If a beneficiary submits a renewal application 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 Program. If the beneficiary is late in filing his or her renewal application by more than 90 days after the expiration date, the Program shall not make reimbursement until the new eligibility period has been established.

### 8:83D-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;
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 is taken on the application;
3. An administrative or other emergency that could not reasonably have been avoided; or
4. Circumstances wholly outside of the control of both the applicant and the Program.

(b) A Senior Gold applicant who meets all the Senior Gold eligibility criteria can reasonably expect to receive his or her Senior Gold eligibility card within 30 days from the date that a complete and valid eligibility application is received by the Program.

(c) In the event that mailing of the eligibility card is delayed, the Program will reimburse the Senior Gold beneficiary directly for the cost (minus a \$15.00 co-payment plus 50 percent of the remaining prescription cost per prescription) of all prescription drugs purchased by the person on or after the 30th day after his or her valid and properly completed application was received by the Program, subject to the following conditions:

1. The eligibility renewal application must have been fully and properly completed;
2. The beneficiary must submit a prescription claim form and proof of purchase for each eligible prescription to the 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; and
3. No direct reimbursement will be made for any drugs purchased after the date when the beneficiary receives his or her eligibility identification card.

### 8:83D-5.5 Agency controls

(a) The Department has the responsibility for reviewing a statistically valid representative sample of Senior Gold cases



to assure beneficiary eligibility. 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 Bureau;
2. An interview with the beneficiary or the beneficiary's representative(s) to review eligibility for Senior Gold and availability of third party resources; and
3. Verification of eligibility factors and third party liability information through collateral contacts.

(b) The Department, in conjunction with the Division of Medical Assistance and Health Services, has the responsibility for monitoring providers participating in the Program, verifying that claims submitted to the Program by such providers are in compliance with Program regulations, and investigating beneficiaries in matters involving potential fraud and/or abuse.

(c) The Department, in conjunction with the Division of Medical Assistance and Health Services, shall, as appropriate, recover benefits incorrectly paid on behalf of a beneficiary.

#### 8:83D-5.6 Responsibilities in the application renewal process

(a) The 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; and
5. Copy eligibility application and supporting documents onto microfilm and retain the microfilm for audit purposes.

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

1. Complete the Senior Gold eligibility application/renewal application form(s) legibly and accurately by:
  - i. Answering all questions fully;
  - ii. Presenting all necessary evidentiary documents;
  - iii. Reading the certification and authorization statement;
  - iv. Signing or marking the application or renewal application; and

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 Division of Medical Assistance and Health Services within the Department of Human Services and the Division of Senior Affairs within the Department by securing evidence that corroborates statements when necessary;

3. Agree to a review by the Department or its agent, if randomly selected for review. Senior Gold 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 or her eligibility expiration date if he or she wishes to renew Senior Gold eligibility;

6. Complete his or her renewal application by interview if selected as part of a sample group by Senior Gold. Senior Gold eligibility will not be renewed if the beneficiary refuses to complete the eligibility review;

7. If the application mailed by the 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 Program for a new application;

8. Notify the Program whenever any one of the following occurs:

i. His or her marital status changes; or

ii. He or she moves anywhere within the State of New Jersey, in which case, he or she shall submit proof of new address;

9. Immediately return his or her eligibility card to the Program whenever becoming ineligible due to one of the following:

i. He or she moves out of the State of New Jersey;

ii. He or she becomes eligible for Medicaid, PAAD, or any other plan of assistance or insurance that fully covers pharmaceutical services;

iii. His or her annual income increases to an amount which exceeds the legal limit;

iv. He or she was determined eligible based on his or her disability and he or she stops receiving Social Security Disability benefits; or

v. He or she failed to submit information to confirm eligibility if scheduled recovery payments are in arrears; and

10. 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 Senior Gold 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.

## SUBCHAPTER 6. ELIGIBILITY REQUIREMENTS

### 8:83D-6.1 Age

(a) To be eligible for Senior Gold, 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 birth 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 Social Security office); or
- v. Railroad retirement letter (can be obtained from Railroad Retirement Board).

2. Secondary proofs: If the applicant cannot supply one of the documents listed in (b)1 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; and
- 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 issued within the last six months; or
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.

### 8:83D-6.2 Income standards

(a) Any single permanent resident of New Jersey who is 65 years of age or over who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have a total annual income between \$21,850 and \$31,850 in 2006 to be eligible for Senior Gold benefits. These income limits will increase January 1 of each year in accordance with the Social Security cost of living adjustment. This amount shall not be more than \$10,000 above the applicable PAAD income eligibility limits for single persons. Recipients of other State-funded prescription discount benefits are not eligible for the Senior Gold Prescription Discount Program.

(b) Any married permanent resident of New Jersey who is 65 years of age or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have a total annual income between \$26,791 and \$36,791 in 2006 to be eligible for Senior Gold benefits. The income limits will increase January 1 of each year in accordance with the Social Security cost of living adjustment. This amount shall not be more than \$10,000 above the applicable PAAD income eligibility limits for married couples. Recipients of other State-funded prescription discount benefits are not eligible for the Senior Gold Prescription Discount Program.

1. An applicant and spouse shall be considered separated 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 Senior Gold 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. The Program shall consider the applicant and spouse separated only when doing so is more favorable to the applicant for Senior Gold (for example, when the income of an applicant and his institutionalized spouse is combined at \$36,000, the applicant is ineligible for Senior Gold, but if the applicant and spouse are considered separated, the applicant could become eligible for Senior Gold under the single income standard. If the institutionalized spouse was not covered by Medicaid, the spouse could become eligible under the single income standard for PAAD).

(c) All income, from whatever source derived, is considered in determining eligibility for the Program. 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, both 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, non-contributory, qualified and non-qualified);
- xviii. Retirement benefits including distribution from Individual Retirement Arrangements (IRAs) (Traditional, Simple, Roth or 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 Senior Gold 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. 8:83-2.2 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 of 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 or her Federal, State and/or city income tax return and other acceptance evidence.



(e) Senior Gold 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 Senior Gold eligibility.

(f) Since Senior Gold eligibility is based upon actual annual income, if the actual income for the current calendar year exceeds the Senior Gold income standard, the person will become ineligible for the entire calendar year and shall be required to repay benefits paid for all prescription 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 Senior Gold standard will be reviewed individually.

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

(i) Senior Gold beneficiaries are required to notify the Program immediately if their current year income exceeds the Senior Gold income standard.

(j) Applicants who combine their income by filing joint Federal and/or State income tax returns must combine their income for Senior Gold 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 Senior Gold eligibility purposes.

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

(m) Beginning January 1, 2005, the Commissioner will provide notice of the new income limits annually by publication in the New Jersey Register.

Notice of new income eligibility limits.

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

Administrative change.

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

Amended by R.2003 d.400, effective October 6, 2003.

See: 35 N.J.R. 1336(a), 35 N.J.R. 4722(a).

Increased the income amounts in (a) and (b).

Petition for Rulemaking.

See: 35 N.J.R. 5622(a).

Amended by R.2004 d.300, effective August 2, 2004.

See: 36 N.J.R. 275(a), 36 N.J.R. 3535(a).

Rewrote the section.

Amended by R.2004 d.351, effective September 20, 2004.

See: 36 N.J.R. 1865(a), 36 N.J.R. 4313(b).

In (b), substituted "adjustment" for "increase" following "cost-of-living" in the introductory paragraph, inserted "for the sole benefit of the applicant" preceding "shall be considered" in 1i and substituted "\$36,000" for "\$35,000" in 2i; rewrote (c).

Administrative correction.

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

Administrative change.

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

### 8:83D-6.3 Citizenship

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

### 8:83D-6.4 Residence

(a) "Resident" means a resident as defined in section 3 of P.L. 1975, c.194 (N.J.S.A. 30:4D-22) for purposes of eligibility 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, for 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. The term resident shall be interpreted to mean a person having his or her 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 or she has established a residency 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. Senior Gold beneficiaries are entitled to prescription benefits only when the beneficiary is physically present in the State of New Jersey at the time the prescription is dispensed.

4. 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; and
- viii. Employment records.

5. 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.

6. 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 or she becomes ineligible under the Program and must

notify the Program of the address and return the Senior Discount eligibility card.

#### **8:83D-6.5 Recipient of other assistance and pharmaceutical coverage**

(a) The Senior Gold Prescription Discount Act provides that an eligible person whose prescription drug costs are covered in part by any other program or plan of assistance or insurance may be required to receive reduced assistance under the Program. If an eligible person's prescription drug costs are covered in whole or in part by any other program or plan of assistance or insurance, the other program or plan shall be the primary payer, and the Program shall be the payer of last resort.

(b) Individuals with coverage described in (a) above must submit their prescriptions for payment to the other program or plan of assistance or insurance for payment before submitting the prescription for payment by the Senior Gold Prescription Discount Program.

(c) The Senior Gold Prescription Discount Act establishes the co-payment for each prescription to be paid by an eligible individual.

(d) At the time of each purchase of a prescription drug, the eligible person shall pay a co-payment that shall not be waived, discounted or rebated in whole or in part.

(e) When an eligible individual has prescription costs paid in part by any other program or plan of assistance or insurance, the amount paid by the Program, when combined with the payment made by the other program or plan of assistance or insurance, shall not exceed the amount that the Program would pay if no other coverage was available.

#### **8:83D-6.6 Senior Gold eligibility application and renewal application forms**

(a) The Senior Gold Eligibility application (Form SG-1) is the only acceptable form to be utilized in determining the applicant's initial eligibility for Senior Gold. These applications and brochures are available at the local Social Security Office, the County Office on Aging, the Office of Disability Services, pharmacies and the Internet.

(b) Senior Gold Eligibility renewal application forms (Form SG-2) will be automatically mailed to the beneficiary approximately four months prior to the eligibility expiration date. This is the only acceptable form to be utilized in renewing Senior Gold Program eligibility.

#### **8:83D-6.7 Social Security account number**

(a) Senior Gold applicants are not required to submit their Social Security Account Number (SSAN); however, failure to provide it will delay the processing of their application. Each applicant for Senior Gold benefits must include his or her 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 are asked to 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 Program. This number will be used throughout the beneficiary's Senior Gold eligibility.

#### **8:83D-6.8 Certification**

The applicant for Senior Gold 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 or 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.

#### **8:83D-6.9 Authorization**

(a) By signing/marketing the certification and authorization statement on the application/renewal application form, the applicant/re-applicant authorizes:

1. 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;

2. Visitation and review by representatives of the Department, or the Division of Medical Assistance and Health Services;

3. Assignment of benefits to the State of New Jersey if he or she or his or 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 Senior Gold Program to the Department and the New Jersey Division of Medical Assistance and Health Services or any law enforcement authority of this State charged with the investigation or prosecution of violations of the civil and criminal provisions of the "Senior Gold Prescription Discount Act" or the criminal laws of this State.

#### **8:83D-6.10 Eligibility period**

(a) A Senior Gold eligibility card is effective for the dates indicated on the card. The Senior Gold beneficiary shall renew his or her eligibility in accordance with the provisions of N.J.A.C. 8:83D-6.6.

(b) Renewal applications must be completed and returned to the Senior Gold Program by the beneficiary at least 45 days prior to the expiration date to ensure continuous coverage.

#### **8:83D-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 his or her authorized agent.

(b) Disclosure of information without the consent of the applicant, beneficiary or his or her 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, PAAD 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 representative 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," the "Senior Gold Prescription Discount 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 benefits or for subsequent verification of Medicaid eligibility; or

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).

#### 8:83D-6.12 Appeal process

(a) When the Program determines that an applicant is ineligible for benefits, the applicant has the right to appeal the decision by submitting a written request for a fair hearing to the Senior Gold Prescription Discount Program, PO Box 724, Trenton, New Jersey 08625-0724, within 30 calendar days from the date of mailing of the notice of ineligibility. The document must clearly state the basis for such a request.

(b) The Program 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 the Program's determination deviates from the requirements and standards of the regulations and statute.

(d) When the Senior Gold beneficiary requests a fair hearing, he or she shall clearly indicate the existence of a disputed question or fact or law arising from the requirements and standards of the rules and statutes of the Senior Gold Program. If the beneficiary fails to establish a contested case, the Senior Gold Program shall deny the hearing request. Hearings are not intended to be informational or to provide a forum for the expression of public sentiment on Senior Gold actions or policies.

### SUBCHAPTER 7. RECOVERIES AND LIENS

#### 8:83D-7.1 Recoveries for benefits correctly paid

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 or her death because of assistance paid, or to be paid, on his or her behalf under the Senior Gold 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.

#### 8:83D-7.2 Recoveries for benefits incorrectly paid

(a) As provided in N.J.S.A. 30:4D-1 et seq., the Department or Division of Medical Assistance and Health Services on behalf of the Department of Health and Senior Services may take all necessary action to recover the cost of benefits incorrectly paid on behalf of a beneficiary. If it is determined that an applicant's income exceeded the eligibility limit in a prior year, a new Senior Gold card will not be issued until the beneficiary and/or his or her spouse agrees to repay the benefits received incorrectly. If the beneficiary cannot repay the bill in full, a monthly repayment schedule will be established by the Program, but if the beneficiary fails to fulfill the requirements of the repayment agreement, future Senior Gold benefits may be suspended until the bill is paid in full.

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; and

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