

- 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.

Amended by R.2006 d.431, effective December 18, 2006.
See: 38 N.J.R. 1124(a), 38 N.J.R. 5360(a).

In (b)1, substituted "or the" for "/" and deleted "(s)" following "form"; and in (b)1ii, inserted ", including a copy of any third party health insurance cards and/or Medicare prescription benefits coverage cards;".

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 18 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 \$22,572 and \$32,572 in 2007 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 \$27,676 and \$37,676 in 2007 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).

Administrative change.

See: 38 N.J.R. 5362(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 or marking the certification and authorization statement on a Senior Gold eligibility 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. Visitation and review by representatives of the Department, or the Division of Medical Assistance and Health Services;
4. 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
5. 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.

Amended by R.2006 d.431, effective December 18, 2006.
See: 38 N.J.R. 1124(a), 38 N.J.R. 5360(a).

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

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;

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 Reform Act of 1990 (P.L. 1990, c.8); or

9. The release of beneficiary information or files to Medicare-endorsed prescription drug discount card programs or the Centers for Medicare and Medicaid Services for the purpose of coordination of benefits between the Medicare Prescription Drug Program and Senior Gold.

Amended by R.2006 d.431, effective December 18, 2006.
See: 38 N.J.R. 1124(a), 38 N.J.R. 5360(a).

In (c)7, deleted "or" from the end; in (c)8, inserted "Reform" and substituted "; or" for the period at the end; and added (c)9.

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 in accordance with N.J.S.A. 30:4D-45.1.

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.

(b) The Division of Medical Assistance and Health Services, on behalf of 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 Division of Medical Assistance and Health Services shall recover from any such third party the full amount of payments made. Upon request of the Director, Division of Medical Assistance and Health Services, 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 or her guardian, executor, administrator or other appropriate representative.

Amended by R.2007 d.134, effective May 7, 2007.

See: 38 N.J.R. 5295(a), 39 N.J.R. 1711(a).

Rewrote the introductory paragraph of (a).

8:83D-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.

8:83D-7.4 Penalties

Any person violating any provision of the Senior Gold Prescription Discount 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 Senior Gold Prescription Discount 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.