

CHAPTER 83B
HEARING AID ASSISTANCE TO THE
AGED AND DISABLED

Authority

N.J.S.A. 30:4D-36 through 42.

Source and Effective Date

R.2004 d.369, effective October 4, 2004.
 See: 36 N.J.R. 1861(a), 36 N.J.R. 4463(a).

Chapter Expiration Date

Pursuant to Executive Order No. 1(2010), the chapter expiration date is extended from April 2, 2010 until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule is readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Chapter Historical Note

Chapter 83B, Hearing Aid Assistance to the Aged and Disabled, was originally codified in Title 10 as Chapter 69, Hearing Aid Assistance to the Aged and Disabled. Chapter 69, Reimbursement to Pharmaceutical Consultants in Long-Term Care Facilities, was adopted as R.1976 d.6, effective January 9, 1976. See: 7 N.J.R. 504(a), 8 N.J.R. 70(c). Chapter 69 was repealed by Emergency Repeal R.1976 d.216, effective July 12, 1976. See: 8 N.J.R. 385(c).

Chapter 69, Hearing Aid Assistance to the Aged and Disabled, was adopted as R.1988 d.250, effective June 6, 1988. See: 20 N.J.R. 519(a), 20 N.J.R. 1220(a).

Pursuant to Executive Order No. 66(1978), Chapter 69, Hearing Aid Assistance to the Aged and Disabled, was readopted as R.1993 d.281, effective May 14, 1993. See: 25 N.J.R. 228(a), 25 N.J.R. 2589(a).

Pursuant to Reorganization Plan No. 001-1996, Chapter 69, Hearing Aid Assistance to the Aged and Disabled, was recodified to N.J.A.C. 8:83B, effective November 3, 1997. See: 29 N.J.R. 4679(a).

Pursuant to Executive Order No. (66)1978, Chapter 83B, Hearing Aid Assistance to the Aged and Disabled, was readopted as R.1998 d.227, effective April 13, 1998. See: 30 N.J.R. 46(a), 30 N.J.R. 1612(a). Chapter 83B, Hearing Aid Assistance to the Aged and Disabled, expired on October 10, 2003.

Chapter 83B, Hearing Aid Assistance to the Aged and Disabled, was adopted as new rules by R.2004 d.369, effective October 4, 2004. See: Source and Effective Date.

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 83B, Hearing Aid Assistance to the Aged and Disabled, was scheduled to expire on April 2, 2010. See: 41 N.J.R. 3883(a).

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SUBCHAPTER 1. GENERAL PROVISIONS

8:83B-1.1 Purpose

(a) The purpose of this chapter, Hearing Aid Assistance to the Aged and Disabled (HAAAD), is to provide a payment of up to \$100.00 in a calendar year in which a hearing aid is purchased to offset the cost of the hearing aid for individuals who meet the age or disability, income and residency requirements of Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program.

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

8:83B-1.2 Legal authority

The New Jersey Program of Hearing Aid Assistance to the Aged and Disabled (HAAAD) is established by Chapter 198, Laws of 1987 (N.J.S.A. 30:4D-36 et seq.), effective February 4, 1988.

SUBCHAPTER 2. DEFINITIONS

8:83B-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.

“Applicant” means an individual who applies for HAAAD, either personally or through an authorized agent.

“Beneficiary” means an individual who has been found eligible for HAAAD benefits.

“Calendar year” means a year beginning January 1 and ending December 31. “Calendar year” is the base period utilized to determine annual income and HAAAD eligibility.

“Commissioner” means the Commissioner of the Department of Health and Senior Services.

“Department” means the Department of Health and Senior Services.

“Resident” means a person legally domiciled within the State of New Jersey for a period of 30 days immediately preceding the date of application for inclusion in the HAAAD program. Mere seasonal or temporary residence within the State, of whatever duration, does not constitute domicile.

“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. 8:83B-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.

8:83B-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;

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:18-1 et seq.). If the trust identifies a guardian, the trust shall specifically identify him or her by name. A guardian shall be compensated only as provided by law;

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

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

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

SUBCHAPTER 3. ADMINISTRATIVE ORGANIZATION

8:83B-3.1 Department of Health and Senior Services

The Department of Health and Senior Services is the administrative unit of the State government which has control over the administration of HAAAD. Under the terms of the HAAAD law, the Department is responsible for the general policies, governing administration of HAAAD, and for effecting the issuance of rules and procedures in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., for implementing the statutory provisions.

8:83B-3.2 Pharmaceutical Assistance to the Aged and Disabled

Pharmaceutical Assistance to the Aged and Disabled (PAAD) is the unit which has the direct responsibility for the processing of eligibility applications and for authorizing payment of HAAAD benefits.

8:83B-3.3 Agency controls

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

(b) The Department of Health and Senior Services, Division of Medical Assistance and Health Services, has the responsibility for investigating beneficiaries in matters involving potential fraud and/or abuse.

SUBCHAPTER 4. APPLICATION PROCESS
8:83B-4.1 General provisions

The application process includes all activity relating to a request for eligibility determination. The application process 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.

8:83B-4.2 Authorized agent

(a) In those instances where the applicant is incompetent or incapable of filing an eligibility application of 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; or
5. A friend.

8:83B-4.3 Responsibilities in the application process

(a) The Department, through Pharmaceutical Assistance to the Aged and Disabled, establishes procedures on the application process consistent with law and supervises the operation with the policy and procedures so established.

(b) Pharmaceutical Assistance to the Aged and Disabled 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 the AP-2 or HA-1 application;
3. Certify for the Treasurer, State of New Jersey, the names of eligible residents and authorize the payment of HAAAD benefits; and
4. Microfilm eligibility applications and supporting documents and retain microfilm for audit purposes.

(c) The applicant has the responsibility to do the following:

1. Complete the PAAD eligibility application (AP-2) for those applicants not enrolled in the PAAD Program, or the HAAAD eligibility application (HA-1) for those applicants already enrolled in the PAAD Program. The application shall be legible and accurate. The applicant shall:
 - i. Answer all questions fully;
 - ii. Present all necessary evidentiary documents, including physician's prescription or letter attesting to the medical necessity for obtaining a hearing aid and a receipt for the recent purchase of the hearing aid;
 - iii. Read the certification and authorization statement; and
 - iv. Sign or mark the application; and
2. Assist the Department to secure evidence that corroborates the statements when necessary.

(d) The beneficiary has the responsibility to repay the State of New Jersey, upon request, for the cost of benefits incorrectly paid on his or her behalf.

SUBCHAPTER 5. ELIGIBILITY REQUIREMENTS
8:83B-5.1 Age

(a) To be eligible for HAAAD, the applicant must be 65 years of age or older or must 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 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; or
- 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; 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 the application.

8:83B-5.2 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 \$24,432 to be eligible for HAAAD.

(b) Any married permanent resident of New Jersey 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 \$29,956 to be eligible for HAAAD.

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 HAAAD 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. HAAAD shall consider the applicant and spouse separated only when doing so is more favorable to the applicant for HAAAD (for example, when the income of an applicant and his or her institutionalized spouse is combined at \$25,060, the applicant is ineligible for HAAAD, but if the applicant and spouse are considered separated, the applicant could become eligible for HAAAD 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 HAAAD. 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;