HUMAN SERVICES

DIVISION OF AGING SERVICES

OFFICE OF STATE HEALTH INSURANCE FOR THE AGED AND DISABLED AND FACILITIES MANAGEMENT

Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual

Readoption with Amendments: N.J.A.C. 10:167

Proposed: January 19, 2016, at 48 N.J.R. 105(a).

Adopted: April 6, 2016, by Elizabeth Connolly, Acting Commissioner, Department of Human Services.

Filed: May 31, 2016, as R.2016 d.075, **without change.**

Authority: N.J.S.A. 30:4D-24 and P.L. 2012, c. 17.

Effective Dates: May 31, 2016, Readoption;
July 5, 2016, Amendments.

Expiration Date: May 31, 2023.

Summary of Public Comment and Agency Response:

The Department received one comment via e-mail from "Jean Publiee."

COMMENT: Regarding coverage for those persons over the age of 80, who meet the requirements for the Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program, it is cruel to require those persons to pay for coverage with the Federal government for prescriptions because the costs are very high. It is unfair to make senior citizens pay $1,000 for Federal prescription coverage in order to qualify for the PAAD Program. The PAAD Program should not require Federal prescription coverage if the person is older than 80 years of age because the

Federal prescription coverage became available after such persons began collecting Social Security benefits.

RESPONSE: The Department disagrees with the assertion that a PAAD beneficiary is required to pay thousands of dollars in order to be determined eligible to participate in the PAAD Program. To be eligible for the Program, an individual must meet the following criteria: residency, age, or Social Security Administration disability and income. Additionally, the 2015 Appropriations Act requires the Department to coordinate the benefits of the PAAD Program with the prescription drug benefits of the Federal "Medicare Prescription Drug, Improvement, and Modernization Act of 2003" as the primary payer. P.L. 2015, c. 63, pp.113-114.

Once an individual has been determined eligible to participate in the Program, the individual, if eligible for Medicare Part A or enrolled in Medicare Part B, must enroll in a Medicare Part D prescription drug plan. This requirement applies only to PAAD beneficiaries. It does not apply to applicants. No person applying for the PAAD Program is required to be enrolled in a Medicare Part D Plan at the time of application. The requirement to enroll in a Part D Plan becomes effective only after an individual has been determined to be eligible to participate in the PAAD Program.

One of the benefits to participating in the PAAD Program is that the Program pays the beneficiary's monthly premiums for certain Medicare Part D Plans. The PAAD Program will pay the premiums for certain basic Medicare Part D Plans with monthly premiums at or below a regional benchmark approved by the Centers for Medicare & Medicaid Services or with monthly premiums up to $20.00 over the benchmark for Medicare Part D Plans that have no deductible. The decision on which Medicare Part D Plan to select is the beneficiary's to make. The beneficiary may choose to enroll in certain Medicare Part D Plans that are at or below the

benchmark or $20.00 over the benchmark with no deductible, in which case the PAAD Program will pay the beneficiary's monthly premiums. If, however, the beneficiary chooses to enroll in a Medicare Part D Plan for which the PAAD Program does not pay the monthly premiums, then the beneficiary must pay his or her own premiums. Any participant who needs assistance with choosing a Medicare Part D Plan should contact the PAAD Hotline at 1-800-792-9745.

Federal Standards Statement

The PAAD Eligibility Manual establishes policies and requirements for the PAAD Program. The PAAD Program is completely State-funded after payment by primary payers, such as Medicare Part D. Therefore, there are no Federal standards governing eligibility or services under PAAD since these are established by State law. However, there are Federal requirements to be followed in other sections of the rules. In such cases, the Department imposes the same requirements as are imposed by the Federal government.

Section 101 of the Federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub.L. 108-173 (2003)), added sections 1860 D-1 through 1860 D-24 to the Federal Social Security Act and established a new Part D program for voluntary prescription drug coverage. Section 1860 D-14 provides for premium and cost sharing subsidies of prescription drug coverage for certain individuals with low income and resources (42 U.S.C. § 1395w-114). As a condition of eligibility for the subsidy, a beneficiary is required to apply for the subsidy with the Federal Social Security Administration or with a state office that accepts Medicaid applications. (42 U.S.C. § 1395w-114(a)(3)).

The Health Insurance Portability and Accountability Act of 1996, Pub.L. 104-191, and the regulations promulgated thereunder by the United States Secretary of Health and Human Services at 45 CFR Parts 160 and 164, known as the "Standards for Privacy of Individually

Identifiable Health Information" (collectively referred to as "HIPAA") apply to health information created or maintained by health care providers who engage in certain electronic transactions, health plans, and health care clearinghouses. The Department is a covered entity within the meaning of HIPAA.

Pursuant to 45 CFR 164.512(d), a covered entity may disclose protected health information to a health oversight agency (such as the Centers for Medicare & Medicaid Services (CMS)) for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of the health care system, government benefit programs for which health information is relevant to beneficiary eligibility, entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards, or entities subject to civil rights laws for which health information is necessary for determining compliance. Moreover, pursuant to 45 CFR 164.514(d)(3)(iii)(A), when making disclosure permitted under 45 CFR 164.512, a covered entity may reasonably rely on the representation of a public official that the information requested is the minimum necessary for the stated purpose. Therefore, for example, the disclosure of PAAD applicant, reapplicant, or beneficiary information protected under HIPAA to CMS and its endorsed agents, for the purpose of coordination of benefits between the Medicare Prescription Drug Program and the PAAD Program, would not constitute a violation of HIPAA. To the extent the PAAD Program may be subject to HIPAA, the rules proposed for readoption with amendments would meet but not exceed the requirements of HIPAA.

Except as described above, there are no Federal standards applicable to the subject matter of the rules readopted with amendments. Since any Federal requirements applicable to the rules are met, but not exceeded, no Federal standards analysis is required.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 10:167.

Full text of the adopted amendments follows:

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