

RULE ADOPTIONS

HEALTH AND SENIOR SERVICES

SENIOR SERVICES AND HEALTH SYSTEMS BRANCH

DIVISION OF SENIOR BENEFITS AND UTILIZATION MANAGEMENT

Adopted Amendments: N.J.A.C. 8:83-2.1 and 6.9; and 8:83D-2.1, 5.6, 6.9, and 6.11

Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual Definitions; Authorization

Senior Gold Prescription Program Manual Authorization; Definitions; Responsibilities in the Application Renewal Process; Confidentiality and Disclosure of Information

Proposed: February 21, 2006 at [38 N.J.R. 1124\(a\)](#).

Adopted: August 1, 2006 by Fred M. Jacobs, M.D., J.D.,
Commissioner, Department of Health and Senior Services.

Filed: November 15, 2006 as R.2006 d.431, **with substantive changes** not requiring additional public notice and comment (see [N.J.A.C. 1:30-6.3](#)).

Authority: [N.J.S.A. 30:4D-20](#) et seq., particularly 30:4D-24; Executive Reorganization Plan No. 001-1996; [N.J.S.A. 30:4D-43](#) et seq., particularly 30:4D-45; and P.L. 2006, c. 45 (approved July 8, 2006).

Effective Date: December 18, 2006.

Expiration Date: September 9, 2008, N.J.A.C. 8:83;
May 18, 2007, N.J.A.C. 8:83D.

Summary of Public Comments and Agency Responses:

The Department received written comments from Curtis D. Edmonds, Esq., Senior Staff Attorney, New Jersey Protection and Advocacy, Inc., Trenton, NJ (NJP&A).

1. COMMENT: NJP&A supports many of the amendments that the Department is considering to ensure the continued coordination of the PAAD and Senior Gold programs with the new Medicare prescription drug benefit.

RESPONSE: The Department thanks the commenter for its support of many proposed amendments.

2. COMMENT: NJP&A questions the statement in the regulations that the Department intends to serve as an "authorized representative" for its PAAD and Senior Gold beneficiaries. The definition of "authorized representative" language in the proposal does not reflect current Federal regulations and should be removed from the proposed regulations. Furthermore, there is no reason to include this language on enrollment forms for PAAD or Senior Gold, as the language may confuse some applicants and discourage others from applying.

RESPONSE: The Department disagrees with the commenter. PAAD and Senior Gold are Qualified State Pharmaceutical Assistance Programs (SPAPs) under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108-173, effective December 8, 2003 (MMA). For a listing of SPAPs approved by CMS, see <http://www.cms.hhs.gov/States/Downloads/QualifiedSPAPList.pdf>. 42 CFR §423.464 provides, in part, that a qualified prescription Medicare Part D plan, as defined at 42 CFR §423.4, must permit SPAPs to coordinate benefits with such plan. The MMA and its implementing regulations do not address the issue of whether SPAPs can be authorized representatives of enrollees. However, 42 CFR §423.560 provides that an enrollee may appoint any person or entity to act on his or her behalf in filing a coverage determination or any appeal. Moreover, CMS, in its publication "CMS Responses to Recommendations made by the State Pharmaceutical Assistance Transition Commission," available at <http://www.cms.hhs.gov/States/Downloads/CMSResponsetoSPAPCommissionReport.pdf>, states: "Alternatively, if under state law an SPAP has the authority to act on behalf of its enrollees with respect to their Part D coverage, including the filing of exceptions and appeals, the SPAP may be considered an authorized representative of its enrollees and may file an exception or appeal on their behalf."

P.L. 2006, c. 45, approved July 8, 2006 (the State budget for fiscal year 2006-2007), establishes the Department's statutory authority to act as "authorized representative" for PAAD and Senior Gold beneficiaries for the purposes of coordinating benefits with the Medicare Prescription Drug Benefit. Specifically, that law provides in part as follows, with respect to PAAD:

"Notwithstanding the provisions of any other laws or regulations to the contrary, in order to maximize prescription drug coverage under Medicare Part D, the Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program shall be designated the authorized representative for the purposes of coordinating benefits with Medicare Part D, including enrollment and appeals of coverage determinations. PAAD is authorized to represent program beneficiaries in the pursuit of such coverage. PAAD representation shall not result in any additional financial liability on behalf of such program beneficiaries and shall include, but

need not be limited to, the following actions: application for the premium and cost-sharing subsidies on behalf of eligible program [sic] beneficiaries; pursuit of appeals, grievances, or coverage determinations; facilitated enrollment in a prescription drug plan or MA-PD plan. If the beneficiary declines enrollment in any Medicare Part D plan, the beneficiary shall be barred from all benefits of the PAAD Program."

That law further provides with respect to Senior Gold: "Notwithstanding the provisions of any other laws or regulations to the contrary, in order to maximize drug coverage under Medicaid Part D, the appropriation for the Senior Gold Prescription Discount Program is conditioned on the Senior Gold Prescription Discount Program being designated the authorized representative for the purpose of coordinating benefits with the Medicare Drug Program, including appeals of coverage determinations. Senior Gold is authorized to represent program beneficiaries in the pursuit of such coverage. Senior Gold representation shall include, but not to be limited to the following actions: pursuit of appeals, grievances, or coverage determinations."

The proposed definition of "authorized representative" at N.J.A.C. 8:83D-2.1 contains an incorrect reference to [42 CFR §403.802](#). [42 CFR §§403.800](#) through [403.822](#) set forth the standards and procedures CMS uses to implement the Medicare Prescription Drug Discount Card and Transitional Assistance Program, which are unavailable to Senior Gold beneficiaries. Therefore, on adoption the Department will delete this reference from the proposed definition of "authorized representative."

Pursuant to §1860D-31 of the MMA, benefits available under the Medicare Prescription Drug Discount Card and Transitional Assistance Program ceased on May 15, 2006. Therefore, on adoption, the Department will change the definition of "authorized representative" in the PAAD Eligibility Manual at existing N.J.A.C. 8:83-2.1 to add a reference to the Medicare Prescription Drug Program. On adoption, the Department will also add a definition to the PAAD Eligibility Manual at existing N.J.A.C. 8:83-2.1, "Medicare Prescription Drug Program," which is the Federal legislative authority for the Medicare Part D prescription drug benefit program. The change on adoption would make the term "authorized representative" in the PAAD Eligibility Manual consistent with the definition of the same term in the Senior Gold Program Manual, as modified upon adoption as described above. These changes to existing N.J.A.C. 8:83-2.1 will assure that the Department will be able to act as authorized representative for PAAD beneficiaries to coordinate their benefits under the Medicare Part D prescription drug program.

With respect to the commenter's assertion that "there is no reason to include this language on enrollment forms for PAAD or Senior Gold, as the language may confuse some applicants and discourage others from applying," the Department is not aware of any instances in which applicants have been so

confused or discouraged. Furthermore, comments on the form of application used by applicants in the PAAD or Senior Gold programs are outside the scope of the proposal.

Federal Standards Statement

N.J.A.C. 8:83 and 8:83D establish the administrative manuals for the PAAD and Senior Gold programs, respectively. The adopted amendments would enable the Department to coordinate benefits afforded under these State-funded programs with the benefits available under the Medicare Prescription Drug Program, established pursuant to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108-173, effective December 8, 2003, available at <http://www.cms.hhs.gov/mmu/HR1>, and the regulations promulgated thereunder for coordination of benefits by the Centers for Medicare and Medicaid Services at [42 CFR §423.452](#) et seq. To effectuate this coordination of benefits, the adopted amendments would establish a definition of the term "authorized representative" that is consistent with [42 CFR §423.452](#) et seq., that would permit the Department to act on behalf of an individual in making decisions related to the individual's enrollment in, disenrollment from, and access to negotiated prices under the Medicare Prescription Drug Program.

The Health Insurance Portability and Accountability Act of 1996, Public Law 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," hereinafter 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's PAAD and Senior Gold programs may be covered entities, specifically, health plans, 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 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 healthcare system, government benefit programs for which health information is relevant to beneficiary eligibility, entities subject to government regulatory programs for which 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 disclosures 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, the disclosure of PAAD and Senior Gold 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 and Senior Gold programs, would not constitute a violation of HIPAA. To the extent the PAAD and Senior Gold programs may be subject to HIPAA, the adopted amendment at N.J.A.C. 8:83D-6.11(c)9 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 adopted amendments.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 83

PHARMACEUTICAL ASSISTANCE TO THE AGED AND DISABLED ELIGIBILITY MANUAL

8:83-2.1 Definitions

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

"Authorized representative" means a person with legal authority to act on behalf of an individual in making decisions related to the individual's enrollment in, disenrollment from, and access to negotiated prices and Transitional Assistance under the Medicare Prescription Drug Discount Card and Transitional Assistance Program *[as defined by [42 CFR §403.802](#)]* ***and the Medicare Prescription Drug Program***.

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

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

8:83-6.9 Authorization

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

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

Recodify existing 1.-4. as 2.-5. (No change in text.)

CHAPTER 83D

SENIOR GOLD PRESCRIPTION PROGRAM MANUAL

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:

"Authorized representative" means a person with legal authority to act on behalf of an individual in making decisions related to the individual's enrollment in, disenrollment from, and access to negotiated prices under the Medicare Prescription Drug Program *[as defined by [42 CFR §403.802](#)]*.

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

"Medicare-approved prescription drug discount card program" means a prescription drug discount card program as to which the sponsor thereof has received Medicare approval and has entered into a contract with CMS.

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

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

- (a) (No change.)
- (b) The applicant or beneficiary has the responsibility to:
 1. Complete the Senior Gold eligibility application or the renewal application form legibly and accurately by:

- i. (No change.)
- ii. Presenting all necessary evidentiary documents, including a copy of any third party health insurance cards and/or Medicare prescription benefits coverage cards;
- iii.-v. (No change.)

2.-10. (No change.)

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;

Recodify existing 1.-4. as 2.-5. (No change in text.)

8:83D-6.11 Confidentiality and disclosure of information

(a)-(b) (No change.)

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

- 1.-6. (No change.)
- 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.