

HUMAN SERVICES

DIVISION OF AGING SERVICES

Hearing Aid Assistance to the Aged and Disabled

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

Authorized By: Elizabeth Connolly, Acting Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-41, 52:14C-1 et seq., and 52:14D-1 et seq.; and Reorganization Plan No. 001-1996.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-088.

Submit written comments by August 4, 2017, to:

Diane Giordano

Office of Legal and Regulatory Affairs

Division of Aging Services

PO Box 723

Trenton, NJ 08625-0723

or electronically at:

Doas.legal@dhs.state.nj.us

A copy of the notice of proposal is available for review at all offices of the Area Agencies on Aging, which are situated in all 21 counties.

The agency proposal follows:

Summary

The New Jersey Department of Human Services (Department) proposes to readopt with amendments N.J.A.C. 10:167E; the chapter was scheduled to expire on May 11, 2017, pursuant to N.J.S.A. 52:14B-5.1. Since the Department submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration date was extended 180 days to November 7, 2017, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Hearing Aid Assistance to the Aged and Disabled Program was originally codified at N.J.A.C. 10:69 under the Department in 1988. 20 N.J.R. 519(a); 1220(a). N.J.A.C. 10:69 was readopted in 1993. 25 N.J.R. 228(a); 2589(a).

Authority for the Hearing Aid Assistance to the Aged and Disabled (HAAAD) Program was transferred from the Department to the Department of Health and Senior Services (DHSS) pursuant to Executive Reorganization Plan No. 001-1996. Accordingly, the rules establishing the criteria for this program were recodified from N.J.A.C. 10:69 to 8:83B effective November 3, 1997. 29 N.J.R. 4679(a).

Pursuant to Executive Order No. 66 (1978), Chapter 83B, HAAAD was readopted effective April 13, 1998. 30 N.J.R. 46(a); 1612(a). The rules governing the HAAAD program expired on October 13, 2003. New rules were adopted effective October 4, 2004. 36 N.J.R. 1861(a); 4463(a). N.J.A.C. 8:83B was readopted with amendments on May 11, 2010. 41 N.J.R. 3883(a); 42 N.J.R. 1052(b).

In 2012, N.J.S.A. 30:1A-14 transferred to the Division of Aging Services (DoAS), the powers and duties of the DHSS that relate to the provision of programs or services for senior citizens, the New Jersey State Commission on Aging, the Division on Aging and Community Services, and any other division relating to senior benefits. P.L. 2012,

c. 17, reestablished the DHSS as the Department of Health and established the DoAS within the Department.

N.J.A.C. 8:83B, HAAAD, was recodified as N.J.A.C. 10:167E by administrative change, effective June 16, 2014. As part of the recodification, administrative changes were made throughout concerning cross-references, agency names and addresses, and the elimination of text rendered redundant or moot by the transfer of authority. 46 N.J.R. 1643(a).

The chapter expiration date was extended two years to May 11, 2017, pursuant to the adoption of N.J.S.A. 52:14B-5.1.b. 43 N.J.R. 1203(a).

The Department has reviewed the rules and has determined that the rules are necessary, adequate, reasonable, proper, and responsive for the purpose for which they were originally promulgated. Grammatical and technical changes would be made to the chapter where necessary.

These rules are promulgated to set forth the basic policies and procedures relating to the \$100.00 reimbursement to beneficiaries to help offset the cost of a hearing aid purchase. Individuals must meet the age or disability, income, and residency requirements for the Pharmaceutical Assistance to the Aged and Disabled (PAAD) program found at N.J.A.C. 10:167. Beneficiaries can get one \$100.00 reimbursement per calendar year.

N.J.A.C. 10:167E-1.1 explains the purpose and applicability of the chapter.

N.J.A.C. 10:167E-1.2 sets forth the authority for the HAAAD program as N.J.S.A. 30:4D-36 et seq. A proposed amendment would correct the cross-reference to the chapter law.

N.J.A.C. 10:167E-2.1 defines "annual income," "applicant," "beneficiary," "calendar year," "Commissioner," "Department," "resident," "special needs trust," and "viatical settlement."

N.J.A.C. 10:167E-2.2 lists the provisions of a "special needs trust." The cross-reference to the statute limiting a trustee's commissions is proposed for correction. N.J.S.A. 3B:18-1 was repealed by P.L. 2000, c. 29, § 2. Also, the address for proper notice of expenditures is proposed for amendment to reflect the correct office within the Department.

N.J.A.C. 10:167E-3.1 describes the administrative responsibilities of the Department for the HAAAD program.

N.J.A.C. 10:167E-3.2 provides that the Pharmaceutical Assistance to the Aged and Disabled unit has the responsibility for the processing of eligibility applications and for authorizing payment for HAAAD benefits.

N.J.A.C. 10:167E-3.3 describes the agency controls established by the Commissioner of the Department of Human Services over the HAAAD program.

N.J.A.C. 10:167E-4.1 explains the general provisions of the application process.

N.J.A.C. 10:167E-4.2 defines who may be an authorized agent for the applicant.

N.J.A.C. 10:167E-4.3 sets forth the responsibilities of both the Department and the applicant in the application process. N.J.A.C. 10:167E-4.3(b)4 is proposed for amendment to reflect the record retention policy for the HAAAD program, by deleting the need to maintain microfilm copies of applications. N.J.A.C. 10:167E-4.3(c) requires HAAAD applicants who are not enrolled in PAAD to submit the PAAD AP-2 application, and requires applicants already enrolled in PAAD to complete the HAAAD HA-1

application. The proposed amendments would require PAAD to process both applications. This section is proposed for amendment to rename the AP-2 as the PAAD eligibility application and to rename the HA-1 as the HAAAD eligibility application. The websites for obtaining these applications are also proposed to be updated.

Subchapter 5 describes the eligibility requirements for the HAAAD program.

N.J.A.C. 10:167E-5.1 details the age requirements for HAAAD and the proofs of age accepted for eligibility determination purposes. A proposed amendment would clarify the age for eligibility, and the age for eligibility if receiving Social Security Title II disability benefits. Also, proposed amendments would modify the style of content to delete parentheses.

N.J.A.C. 10:167E-5.2 sets forth the income standards for the HAAAD program. This section outlines the types of income counted in the HAAAD eligibility process, as well as the exclusions and the proofs of income required by the program. N.J.A.C. 10:167E-5.2 also provides that the applicant is responsible to notify the program when a change in income is experienced, and that the program may recover beneficiary payments erroneously paid. Proposed amendments would clarify the age for eligibility and the age for eligibility if receiving Social Security Title II disability benefits, delete the reference to the Federal Civil Liberties Act of 1988 because the program for reparation payments to Japanese Americans concluded in 1998 (50 U.S.C. §4214) (subparagraph (c)2vii), and delete the reference to 1996 as the start date for increasing income eligibility limits by the Social Security cost of living adjustment, as the income eligibility limit is adjusted annually on January 1 based upon the Social Security cost of living

adjustment (subsection (i)). Also, proposed amendments would modify the style of content to delete parentheses.

N.J.A.C. 10:167E-5.3 provides that a HAAAD beneficiary need not be a citizen of the United States, but a beneficiary must be a resident of New Jersey.

N.J.A.C. 10:167E-5.4 provides that the HAAAD program may limit or deny benefits when the beneficiary has other coverage for the cost of hearing aids, and that a beneficiary may be entitled to reduced assistance from HAAAD if he or she has partial coverage under another program. This section also provides that HAAAD may recover from a third party payer when an applicant has partial coverage and out-of-pocket expenses less than \$100.00.

N.J.A.C. 10:167E-5.5 requires applicants to sign a certification that all the answers to questions and items on the application are true and accurate to the best of his or her knowledge.

N.J.A.C. 10:167E-5.6 provides that by signing the certification and authorization, the applicant authorizes the assignment of benefits to the State of New Jersey, if the applicant or spouse has any other plan of assistance or insurance that covers, at least in part, the cost of hearing aids.

N.J.A.C. 10:167E-5.7 specifies the eligibility period for HAAAD. This section is proposed for amendment to delete the provision prohibiting payments for hearing aids purchased prior to 1988, because it is no longer necessary.

N.J.A.C. 10:167E-5.8 details how recoveries are made when benefits are incorrectly made.

N.J.A.C. 10:167E-5.9 sets forth the appeal process available to applicants and beneficiaries.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments will have a positive social impact on HAAAD beneficiaries. Generally, the Department's experience with N.J.A.C. 10:167E has been positive because it has provided, and will continue to provide, beneficiaries with a \$100.00 payment to offset the cost of a hearing aid purchase. HAAAD provides assistance to lower income elderly and disabled individuals. Approximately 200 individuals currently receive HAAAD benefits. Readoption of the HAAAD rules would ensure that eligible individuals continue to receive assistance in purchasing hearing aids through the HAAAD Program without interruption. Failure to readopt N.J.A.C. 10:167E would jeopardize this essential program.

For all these reasons, the Department expects a positive reaction to the proposed readoption with amendments.

Economic Impact

N.J.A.C. 10:167E has had a positive economic impact on New Jersey and eligible State residents. The rules proposed for readoption with amendments of N.J.A.C. 10:167E will continue the HAAAD program and its positive economic impact on elderly and disabled residents of New Jersey. Beneficiaries receive a payment of

\$100.00 to help offset the cost of a hearing aid. Each beneficiary is entitled to one payment in a calendar year. A reimbursement check is sent directly to the beneficiary. There is no payment made to providers, such as physicians, audiologists, or hearing aid dealers.

Federal Standards Statement

The HAAAD program is completely State-funded. N.J.A.C. 10:167E is not being readopted and amended under the authority of, or in order to implement, comply with, or participate in any program established under Federal law, or under a State statute that incorporates or refers to Federal law, standards, or requirements.

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,” (hereinafter collectively referred to as “HIPAA”) apply to health information created or maintained by health plans, and health care clearinghouses. The Department’s PAAD Program may be a covered entity, specifically, a health plan, within the meaning of HIPAA. As HAAAD applicants often apply for the program through their PAAD application, HIPAA may cover the HAAAD program.

All HAAAD Program staff have had the appropriate HIPAA training. HAAAD does not disclose to other agencies any health related information from the PAAD/HAAAD combined application. Therefore, to the extent HAAAD may be subject to HIPAA, the rules proposed for re-adoption 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 proposed for readoption with amendments. Since any Federal requirements applicable to the rules are met, but not exceeded, no Federal standards analysis is required.

Jobs Impact

Persons eligible for the HAAAD program are elderly or disabled individuals who are generally not employed. The HAAAD program does not make payment to, or regulate, physicians, audiologists, or hearing aid dispensers. There is one full-time equivalent in the Department assigned to the HAAAD program. If the rules were not adopted, this position would be eliminated. The rules proposed for readoption with amendments will not result in the generation or loss of jobs.

Agriculture Industry Impact

The rules proposed for readoption with amendments will have no impact on the agriculture industry in the State of New Jersey.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments do not impact small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These rules regulate beneficiaries of the HAAAD program and the government agency that administers the HAAAD program. Consequently, a regulatory flexibility analysis is unnecessary.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme

unlikely that the rules proposed for re-adoption with amendments would evoke a change in the average costs associated with housing because the rules only apply to HAAAD beneficiaries with regard to assistance in the purchase of hearing aids.

Smart Growth Development Impact Analysis

The rules proposed for re-adoption with amendments will have an insignificant impact on smart growth and there is an extreme unlikely that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within the designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules relate to assistance in the purchase of hearing aids and do not apply in any way to housing.

Full text of the rules proposed for re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:167E.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

10:167E-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 **the** Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program.

(b) (No change.)

10:167E-1.2 Legal authority

The New Jersey Program of Hearing Aid Assistance to the Aged and Disabled (HAAAD) is established by Chapter [198] **298**, Laws of 1987 (N.J.S.A. 30:4D-36 et seq.), effective February 4, 1988.

SUBCHAPTER 2. DEFINITIONS

10:167E-2.2 Special needs trusts

(a) To be considered a special needs trust, the trust shall include the following provisions:

1.-9. (No change.)

10. The trust shall specifically state that the trustee shall be compensated only as provided by law **in accordance with** [(N.J.S.A. 3B:18-[1]**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. (No change.)

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] **State Health Insurance** for the Aged **& Disabled**, Division of Aging Services, PO Box 715, Trenton, NJ 08625-0715, or any successor agency, 45 days prior to the expenditures; **and**

13. (No change.)

SUBCHAPTER 4. APPLICATION PROCESS

10:167E-4.2 Authorized agent

(a) In those instances where the applicant is incompetent or incapable of filing an eligibility application [of] **on** 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.-5. (No change.)

10:167E-4.3 Responsibilities in the application process

(a) The Department, through [Pharmaceutical Assistance to the Aged and Disabled] **PAAD**, 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] **PAAD** has responsibility in the application process to:

1. (No change.)
2. Process the [AP-2 or HA-1 application] **PAAD and HAAAD applications;**
3. (No change.)
4. [Microfilm or electronically scan] **Maintain** eligibility applications and supporting documents [and retain microfilm or electronic copies] 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.-iv. (No change.)

2. (No change.)

(d) (No change.)

(e) The [AP-2] **PAAD** and [HA-1] **HAAAD** applications may be obtained as follows:

1. The [AP-2] **PAAD** application can be found at

[\[www.state.nj.us/health/forms/ap-2\]](http://www.state.nj.us/health/forms/ap-2)

<http://www.state.nj.us/humanservices/doas/forms/ap-2.pdf>, and the [HA-1] **HAAAD**

application can be found at [\[www.state.nj.us/health/seniorbenefits/haaaddetail\]](http://www.state.nj.us/health/seniorbenefits/haaaddetail)

<http://www.state.nj.us/humanservices/doas/forms/ha-1.pdf>;

2.–3. (No change.)

(f) The [AP-2] **PAAD** application shall contain fields for the submission of information as required by N.J.A.C. 10:167-6.6 and the [HA-1] **HAAAD** application shall contain fields for the submission of information required by (c) above and other identifying information for the applicant, such as name, address, zip code, and applicant's Social Security number and PAAD identification number.

SUBCHAPTER 5. ELIGIBILITY REQUIREMENTS

10:167E-5.1 Age

(a) To be eligible for HAAAD, the applicant must be 65 years of age or older or must be [under] **between 18 and 65** and [over 18 years of age and receive] **receiving** 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] **shall** 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.-iii. (No change.)

iv. Social Security records verifying age, **which** [(]can be obtained from local Social Security office[)]; or

v. Railroad retirement letter, **which** [(]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.-iv. (No change.)

v. Church record of baptism **for** [(]age five or after[)];

vi.-xvii. (No change.)

(c) (No change.)

10:167E-5.2 Income standards

(a) Any single permanent resident of New Jersey who is 65 years of age or [over] **older** or who is [under] **between 18 and 65** [and over 18 years of age] and is receiving Social Security Title II disability benefits must have an annual income of less than \$26,655 to be eligible for HAAAD.

(b) Any married permanent resident of New Jersey who is [under 65 and over 18 years of age] **65 years of age or older or who is between 18 and 65** and is receiving Social Security Title II disability benefits, **and his or her spouse**, must have a combined [(applicant and spouse)] annual income of less than \$32,680 to be eligible for HAAAD.

1.-2. (No change.)

(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, [(**which shall be** gross amounts unless otherwise noted)], are as follows:

i.-xvi. (No change.)

xvii. Annuities, [(**whether** contributory, [and] non-contributory, qualified [and] **or** non-qualified)];

xviii. Retirement benefits including distribution from Individual Retirement Arrangements (IRAs), [(**such as** Traditional, Simple, Roth, **or** Educational)], and benefit payments from foreign countries;

xix. [Business] **Net business** income [(net)];

xx.-xxi. (No change.)

xxii. [Rental] **Net rental** income [(net] after expenses)].

2. Sources of income which are excluded in considering eligibility for HAAAD are as follows:

i.- iv. (No change.)

v. Stipends from the Volunteers [to] **in** Service [in] **to** America (VISTA), Foster Grandparents programs, Workforce 55+ program and programs under Title V of the Older Americans Act of 1965;

vi. (No change.)

[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);]

Recodify existing viii.-x. as **vii.-ix.** (No change in text.)

[xi.] **x.** Proceeds received by the beneficiary of a special needs trust [(see] **as described in** N.J.A.C. 10:167-2.2 [for provisions)];

[xii.] **xi.** Rollovers from one tax deferred financial instrument, **such as** [(pension, annuity, IRA, insurance contract or other retirement benefits)], to another tax deferred financial instrument;

[xiii.] **xii.** (No change in text.)

[xiv.] **xiii.** An insurance policyholder's original contributions if [Demutualization] **demutualization** of the policy occurs [(and, in that case, only the earnings on 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 acceptable evidence.

(e)-(h) (No change.)

(i) [Beginning January 1, 1996 and annually thereafter, the] **The** income eligibility limits shall increase **annually on January 1** by the amount of the maximum Social Security benefit cost-of-living adjustment for that year for single and married persons, respectively, in accordance with 42 U.S.C. § 415(i)(2)(D), incorporated herein by reference. The Commissioner shall publish the new income limits annually in the New Jersey Register.

10:167E-5.7 Eligibility period

A person eligible for HAAAD is entitled to receive a payment of up to \$100.00 in a calendar year. Only one benefit may be issued in the period between January 1 and

December 31 of any year. [No benefits will be granted for hearing aids purchased prior to February 4, 1988.]

10:167E-5.9 Appeal process

(a) When PAAD determines that an applicant is ineligible for [Hearing Aid Assistance for the Aged and Disabled] **HAAAD** benefits, the applicant has the right to appeal the decision by submitting a written request for a fair hearing to Pharmaceutical Assistance to the Aged and Disabled, Department of Human Services, PO Box 715, Trenton, New Jersey 08625-0715, within 30 calendar days from the date of mailing of the notice of ineligibility. The document must clearly state the valid basis for such a request.

(b) PAAD shall forward the hearing request to the Office of Administrative Law, which will schedule the hearing and notify all parties of the date, time, and location.

(c) The petitioner [will] **shall** have the burden of demonstrating [the] **that** PAAD's determination deviates from the requirements and standards of the regulations and statute.