

addition to, or in place of, the sanctions that CMS may impose under paragraph (c) of this section.

§ 423.758 Maximum amount of civil money penalties imposed by CMS.

If CMS makes a determination under § 423.509(a), as described in § 423.752(b), excepting those determinations under § 423.509(a)(4), CMS may impose civil money penalties, in addition to, or in place of, the sanctions that CMS may impose under § 423.756(c), in the following amounts:

(a) If the deficiency on which the determination is based has directly adversely affected (or has the substantial likelihood of adversely affecting) one or more Part D plan enrollees—up to \$25,000 for each determination.

(b) For each week that a deficiency remains uncorrected after the week in which the Part D sponsor receives CMS' notice of the determination—up to \$10,000 per week.

(c) If CMS makes a determination that a Part D sponsor has terminated its contract with CMS other than in a manner described in § 423.510 and that the sponsor has therefore failed to substantially carry of the terms of the contract, \$250 per Medicare enrollee from the terminated Part D plan or plans at the time the Part D sponsor terminated its contract, or \$100,000, whichever is greater.

§ 423.760 Other applicable provisions.

The provisions of section 1128A of the Act (except paragraphs (a) and (b)) apply to civil money penalties under this subpart to the same extent that they apply to a civil money penalty or procedure under section 1128A of the Act.

Subpart P—Premiums and Cost-Sharing Subsidies for Low-Income Individuals

§ 423.771 Basis and scope.

(a) *Basis.* This subpart is based on section 1860D-14 of the Act.

(b) *Scope.* This subpart sets forth the requirements and limitations for payments by and on behalf of low-income Medicare beneficiaries who enroll in a Part D plan.

§ 423.772 Definitions.

For purposes of this subpart, the following definitions apply:

Applicant means the Part D eligible individual applying for the subsidies available to subsidy eligible individuals under this subpart.

Family size means the applicant, the spouse who is living in the same household, if any and the number of individuals who are related to the applicant or applicants, who are living in the same household and who are dependent on the applicant or the applicant's spouse for at least one-half of their financial support.

Federal poverty line (FPL) has the meaning given that term in section 673(2) of the Community Services Block Grant Act (42 USC 9902(2)), including any revision required by that section.

Full-benefit dual eligible individual means an individual who, for any month—

(1) Has coverage for the month under a prescription drug plan under Part D of title XVIII, or under an MA-PD plan under Part C of title XVIII; and

(2) Is determined eligible by the State for medical assistance for full benefits under title XIX for the month under any eligibility category covered under the State plan or comprehensive benefits under a demonstration under section 1115 of the Act. (This does not include individuals under Pharmacy Plus program demonstrations or under a section 1115 demonstration that provides pharmacy-only benefits to these individuals.). It also includes any individual who is determined by the State to be eligible for medical assistance under section 1902(a)(10)(C) of the Act (medically needy) or section 1902(f) of the Act (States that use more restrictive eligibility criteria than are used by the SSI program) of the Act for any month if the individual was eligible for medical assistance in any part of the month.

Full subsidy means the subsidies available to full subsidy eligible individuals under § 423.780(a) and § 423.782(a).

Full subsidy eligible individuals means individuals meeting the eligibility requirements under § 423.773(b).

Income means income as described under section 1905(p)(1) of the Act without use of any more liberal disregards under section 1902(r)(2) of the Act (that is, as defined by section 1612 of the Act). This definition includes the income of the applicant and spouse who is living in the same household, if any, regardless of whether the spouse is also an applicant.

Institutionalized individual means a full-benefit dual eligible individual who is an inpatient in a medical institution or nursing facility for which payment is made under Medicaid throughout a month, as defined under section 1902(q)(1)(B) of the Act.

Other subsidy eligible individuals means those individuals meeting the eligibility requirements under § 423.773(d).

Personal representative for purposes of this subpart means—

- (1) An individual who is authorized to act on behalf of the applicant;
- (2) If the applicant is incapacitated; or incompetent, someone acting responsibly on their behalf, or
- (3) An individual of the applicant's choice who is requested by the applicant to act as his or her representative in the application process.

Resources means liquid resources of the applicant (and, if married, his or her spouse who is living in the same household), such as checking and savings accounts, stocks, bonds, and other resources that can be readily converted to cash within 20 days, that are not excluded from resources in section 1613 of the Act, and real estate that is not the applicant's primary residence or the land on which the primary residence is located.

State means for purposes of this subpart each of the 50 States and the District of Columbia.

§ 423.773 Requirements for eligibility

(a) *Subsidy eligible individual.* A subsidy eligible individual is a Part D eligible individual residing in a State who is enrolled in, or seeking to enroll in a Part D plan and meets the following requirements:

- (1) Has income below 150 percent of the FPL applicable to the individual's family size.

- (2) Has resources at or below the resource thresholds set forth in § 423.773(b)(2) or (d)(2).

(b) *Full subsidy eligible individual.* A full subsidy eligible individual is a subsidy eligible individual who—

- (1) Has income below 135 percent of the FPL applicable to the individual's family size; and
- (2) Has resources that do not exceed—
 - (i) For 2006, 3 times the amount of resources an individual may have and still be eligible for benefits under the Supplemental Security Income (SSI) program under title XVI of the Act (including the assets or resources of the individual's spouse).
 - (ii) For subsequent years, the amount of resources allowable for the previous year under this paragraph (b)(2) increased by the annual percentage increase in the consumer price index (all items, U.S. city average) as of September of that previous year, rounded to the nearest multiple of \$10. The nearest multiple are rounded up if it is equal to or greater than \$5 and down if it is less than \$5.

(c)(1) *Individuals treated as full subsidy eligible.* An individual must be treated as meeting the eligibility requirements for full subsidy eligible individuals under paragraph (b) of this section if the individual is a—

- (i) Full-benefit dual eligible individual;
- (ii) Recipient of SSI benefits under title XVI of the Act; or
- (iii) Eligible for Medicaid as a Qualified Medicare Beneficiary (QMB), Specified Low Income Medicare Beneficiary (SLMB), or a Qualifying Individual (QI) under a State's plan.

(2) CMS notifies an individual treated as a full subsidy eligible under this paragraph (c) of this section that he or she does not need to apply for the subsidies available under this subpart, and is deemed eligible for a full subsidy for a period up to one year.

(d) *Other low-income subsidy individuals.* Other low-income subsidy individuals are subsidy eligible individuals who—

- (1) Have income less than 150 percent of the FPL applicable to the individual's family size; and
- (2) Have resources that do not exceed—