

# Issue Brief

FEDERAL ISSUE BRIEF



Analysis provided for MHA by Larry Goldberg, Goldberg Consulting

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## **Streamlining Medicaid; Medicare Savings Program (MSP) Eligibility Determination and Enrollment – Final Rule**

The Centers for Medicare and Medicaid Services (CMS) have issued a final rule that “will make it easier for millions of eligible people to enroll in and retain their Medicare Savings Program coverage. The final rule Reduces red tape and simplifies Medicare Savings Program enrollment, helping millions of seniors and people with disabilities afford coverage.”

These regulations are effective November 17, 2023. However, some items will not be effective till April 1, 2026.

A copy of the display version of the 132-page rule is available at:  
<https://public-inspection.federalregister.gov/2023-20382.pdf>.

The rule is scheduled for publication in the **Federal Register** on September 21.

### **PROVISIONS OF THE PROPOSED RULE AND ANALYSIS OF AND RESPONSE TO PUBLIC COMMENTS**

#### **A. Facilitating Medicaid Enrollment (Page 5)**

##### **1. Facilitate Enrollment through Medicare Part D Low-Income Subsidy “Leads” Data (42 CFR 435.4, 435.601, 435.911, and 435.952)**

There are three primary MSP eligibility groups: the Qualified Medicare Beneficiary (QMB) group, through which Medicaid pays all of an individual’s Medicare Parts A and B premiums and assumes liability for most associated Medicare cost sharing charges for people with income that does not exceed 100 percent of the Federal Poverty Level (FPL); the Specified Low-Income Medicare Beneficiary (SLMB) group, through which Medicaid pays the Part B premium for people with income that exceeds 100 percent, but is less than 120 percent, of the FPL; and the Qualifying Individuals (QI) group, through which Medicaid pays Part B premiums for people with income of at least 120 percent but less than 135 percent of the FPL.

Through the MSPs, Medicaid pays Medicare Part B premiums each month for over 10 million individuals and Part A premiums for over 700,000 individuals.

#### **Part D Low-Income Subsidy (LIS) Program (Page 9)**

The Social Security Administration (SSA) must transmit the LIS leads data to States, and States must use that data to initiate an application for the MSPs.

CMS is revising its proposed regulation at § 435.911(e)(6)(i) and (ii), redesignated at § 435.911(e)(9)(i) and (ii), to specify that the State must provide individuals effectively applying for the

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MSPs through an LIS application – in addition to and separate from any requests for additional information necessary for the determination of MSP eligibility – (1) information about the availability of Medicaid benefits on other bases, including the scope of such benefits and responsibilities of the individual applying for such benefits; and (2) an opportunity to furnish such additional information as may be needed to determine whether the individual is eligible for such additional Medicaid benefits.

Under this final rule, a State may request CMS approval of another approach to ensuring that applicants have the opportunity to receive determinations on whether they are eligible for Medicaid benefits other than through an MSP.

CMS is applying a compliance date of April 1, 2026 for States to come into full compliance with all the provisions in new § 435.911(e) to facilitate MSP enrollment through LIS leads data.

### ***Streamlining Methodologies*** (Page 31)

CMS proposed to add a new paragraph (e) to § 435.952 to require that States adopt a number of enrollment simplification policies related to the income and resources that are counted in determining MSP, but not LIS, eligibility that would enable State agencies to use the leads data more efficiently, reduce burden on applicants and States, and increase the number of LIS enrollees successfully enrolled in the MSPs.

Prior to January 1, 2024, Federal resource limits for full LIS and the MSPs are aligned, and the income limits for the full LIS benefit and the highest band MSP (the QI group) are the same. Section 11404 of the IRA expanded eligibility for the full LIS benefit beginning January 1, 2024, but did not make any conforming changes for the MSPs. Starting January 1, 2024, individuals who previously were eligible only for partial LIS benefits may be eligible for full LIS benefits under the changes enacted under the IRA. This is because the resource limit for full LIS will increase to the current partial LIS resource limit (\$15,160 for an individual and \$30,240 for a couple in 2023). (Page 37)

While more individuals will qualify for full LIS beginning in 2024, and many full LIS enrollees will continue to qualify for the MSPs, beginning in 2024 there will be more full LIS enrollees who do not qualify for the MSPs. This is because the MSP resource limit will remain unchanged. Also, while the income threshold for full LIS will increase to 150 percent of the FPL beginning in 2024, the Federal income threshold for the QI group will remain at 135 percent of FPL. While CMS acknowledges that the income and resource limits for full LIS and MSPs will no longer align after January 1, 2024, CMS still expects that the methodological changes being finalizing will result in streamlined enrollment into MSPs.

### ***Interest and Dividend Income*** (Page 38)

CMS proposed at § 435.952(e)(1)(i) and (ii) to prohibit States from requesting documentation of dividend and interest income prior to making a determination of MSP eligibility, except when the agency has information that is not reasonably compatible with the applicant's attestation.

CMS is finalizing its proposal on self-attestation for interest and dividend income, except with a modified compliance date of April 1, 2026.

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### **Post-eligibility Verification (Page 40)**

CMS is finalizing its proposal to require States that choose to conduct post-eligibility verification to provide individuals with at least 90 calendar days to respond to requests for additional information, with a modified compliance date of April 1, 2026.

### **Non-liquid resources (Page 43)**

Similar to interest and dividend income, consistent with section 1902(a)(19) of the Act and to minimize administrative burdens on individuals, CMS proposed at § 435.952(e)(2)(i) to require that States accept applicants' attestation of the value of any non-liquid resources, except, as described at proposed § 435.952(e)(2)(ii), when the State has information that is not reasonably compatible with the individual's attestation.

CMS is finalizing its proposal on non-liquid assets with a modified compliance date of April 1, 2026.

### **Burial funds (Page 45)**

Under section 1613(d)(1) of the Act, which applies to both LIS and MSP determinations, up to \$1,500 in burial funds are to be excluded for the applicant (and an additional \$1,500 for their spouse) so long as the burial fund is "separately identifiable and has been set aside."

CMS is finalizing its proposal on burial funds with a modified compliance date of April 1, 2026.

### **Life Insurance Policies (Page 47)**

Under proposed § 435.952(e)(4)(i)(A), if an individual attests to having a life insurance policy with a face value in excess of \$1,500, consistent with current regulations at § 435.948, States may accept the attested cash surrender value.

CMS is finalizing its proposal on life insurance, with a modified compliance date of April 1, 2026.

### **2. Define "Family of the Size Involved" for the Medicare Savings Program Groups using the Definition of "Family Size" in the Medicare Part D Low-Income Subsidy Program (§ 435.601) (Page 55)**

To further facilitate alignment of methodologies used to determine eligibility for the Medicare Part D LIS and MSP groups and facilitate enrollment in the MSPs based on LIS data, CMS proposed to amend § 435.601 ("Application of financial eligibility methodologies") to create a new paragraph (e), in which CMS proposed to define "family size" for purposes of MSP eligibility.

CMS is finalizing its proposal at § 435.601 on family size, with a modified compliance date of April 1, 2026.

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### **3. Automatically enroll certain SSI recipients into the Qualified Medicare Beneficiaries group (§ 435.909) (Page 59)**

Despite the potential benefits for Medicaid beneficiaries and State agencies, CMS' data from 2022 indicates that over 500,000 or 16 percent of SSI recipients who are eligible to enroll in Medicare are not enrolled in the QMB eligibility group. It is CMS' understanding that a major barrier to QMB enrollment is that many States require SSI recipients to file a separate application with the State Medicaid agency to be evaluated for eligibility for the QMB group, even though they have been

determined eligible for the mandatory SSI or 209(b) groups, and all SSI recipients who are entitled or able (with a premium) to enroll in Part A necessarily meet the requirements for QMB eligibility.

CMS is finalizing its proposal to require States to deem individuals enrolled in the mandatory SSI or 209(b) group who have premium-free Medicare Part A as eligible for the QMB group under new § 435.909(b)(1), with a modified compliance date of October 1, 2024 to allow States more time for implementation.

#### **Regulatory Impact Analysis (Page 90)**

The aggregate economic impact of this final rule is estimated to be \$26.16 billion (in real FY 2025 dollars) over 5 years. This represents additional health care spending made by Medicaid on behalf of beneficiaries, with \$10.67 billion paid by the Federal Government and \$7.89 billion paid by the States, and an additional \$7.60 billion in Medicare spending.

#### **Final Comments**

This rule is expensive. While the major thrust is at State Medicaid programs, it will impact providers as well.

As usual, we have included pertinent sections of the rule in red.