

National Senior Citizens Law Center

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Medicare Part D Materials for Advocates

The Low Income Subsidy Redetermination and Redeeming

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The Low Income Subsidy **Redetermination and Redeeming**

The Low Income Subsidy (LIS) is a separate benefit of the Medicare Part D program which permits Part D beneficiaries who meet certain income guidelines to obtain coverage for most of the out of pocket costs of Part D – i.e. premiums, deductibles and coinsurance. There are different levels of assistance under the LIS, but those who qualify for the highest levels of assistance pay no premium, no deductible and low co-payments (around \$1.05-\$5.60 per prescription). More than nine million Medicare beneficiaries receive the LIS—almost forty percent of all Part D enrollees.¹

There are two different ways that Medicare beneficiaries can get the LIS: (1) individuals who are dually eligible for Medicare and Medicaid, as well as those enrolled in Medicare Savings Programs (e.g. QMB, SLMB, QI) and SSI-only recipients are automatically **deemed** eligible for the LIS by the Centers for Medicare and Medicaid Services (CMS); and (2) individuals who are not automatically deemed may apply to be **determined** eligible for the LIS through the Social Security Administration (SSA) or their state Medicaid office.

This tool is about the processes by which those who have already been deemed or determined eligible may continue to receive the LIS in subsequent calendar years.

1. What Is Redetermination/Redeeming?

Redetermination and redeeming are terms for the processes of evaluating whether beneficiaries who receive the LIS are eligible to receive the subsidy in the next calendar year. Redetermination refers to the process for beneficiaries who were originally determined eligible for the LIS by the SSA. Redeeming refers to the process for beneficiaries who were originally deemed eligible for the subsidy by virtue of their SSI or Medicaid eligibility (dual eligibles, including beneficiaries enrolled in a Medicare Savings Program (MSP)).

2. Who Conducts the Redetermination and Redeeming Processes?

CMS evaluates continuing eligibility for the LIS for dual eligibles, including Medicare Savings Program (MSP) enrollees and SSI recipients – i.e. beneficiaries who are “deemed” eligible for the LIS (the “redeeming” process). SSA evaluates continuing eligibility for all other LIS enrollees – i.e. beneficiaries who were not automatically eligible for the LIS and had to apply on their own (the “redetermination” process).

3. What is the CMS Process for Redeeming?

As mentioned above, CMS conducts the redeeming process for beneficiaries who were originally deemed eligible by virtue of their Medicaid eligibility. To be deemed eligible

¹ Kaiser Family Foundation Fact Sheet, “Medicare Fact Sheet: The Medicare Prescription Drug Benefit” (February 2008). 9.5 million of the 25.4 million Part D enrollees receive the Low Income Subsidy.

for the LIS means to qualify automatically without having to complete a separate LIS application. Three groups of beneficiaries are deemed eligible for the LIS: dual eligibles (those with Medicare and full Medicaid), beneficiaries enrolled in a Medicare Savings Program (MSP), and beneficiaries with SSI, whether or not they also receive Medicaid.

First, a little background on the deeming process. Each state Medicaid agency sends a state eligibility file, also referred to as the “MMA file,” to CMS. This file is sent, usually around the middle of the month.² This file lists the names and eligibility information of all beneficiaries who received Medicaid benefits (including MSP) in that month. If a beneficiary’s name appears on a state MMA file, he or she is deemed eligible for the LIS for the rest of the calendar year. This LIS eligibility will not be revoked during the calendar year, even if the beneficiary’s name does not appear on a state file in a later month.

The process of redetermining LIS eligibility for the following year begins with the **July** MMA files. If a beneficiary’s name appears on any file from July through December, he or she will be deemed eligible both for the rest of the current year and for all of the next calendar year.

In September, CMS sends letters to all beneficiaries who were deemed eligible for the LIS for the current year, but do not appear on a July state file.³ The letter informs them that their deemed status will end on December 31st. This “loss of deemed status” letter informs beneficiaries that they may apply for the subsidy through SSA or the State Medicaid office if they want to continue receiving the subsidy in the following year. An SSA LIS application and a postage paid envelope are included in the letter.

Note: Beneficiaries who do not appear on a July state file receive a notice even if they appear on the MMA file in a later month. If they appear on an MMA file in a later month, their deemed eligibility is reestablished and they will be eligible for the subsidy for the following year.

In late September, CMS sends notices to deemed beneficiaries whose co-payment levels will change as of January 1 of the next calendar year.⁴ The letter informs beneficiaries of their new co-payment level. The new co-payment level could be either higher or lower than the current level. Individuals who are redeemed at the same level receive no notice confirming their continued eligibility for the LIS.

CMS describes the 2008 redeeming process in a memorandum to plans⁵ and two letters to State Medicaid Directors.⁶

² As of June 2008, states are able to send files more than once per month. Whether a state sends one file a month or multiple files per month, the redeeming process is the same.

³ See www.cms.hhs.gov/LimitedIncomeandResources/downloads/11198.pdf.

⁴ See www.cms.hhs.gov/LimitedIncomeandResources/downloads/11199.pdf.

⁵ See www.nsclc.org/areas/medicare-part-d/area_folder.2006-09-28.5758698482/area_folder.2006-10-12.2240438420/re-determination-of-low-income-subsidy-eligibility-for-2009/at_download/attachment.

⁶ See www.cms.hhs.gov/States/Downloads/2008RedeemingSMDL.pdf and www.cms.hhs.gov/States/Downloads/Redeeming07312008.pdf.

4. What Is the Process for Redetermination?

SSA conducts its annual redetermination process between August and December for those beneficiaries who affirmatively applied for the LIS through SSA (i.e., were not deemed eligible).

In early September, SSA sends redetermination forms, titled “Social Security Administration Review of Your Eligibility for Extra Help” (SSA Form 1026),⁷ to certain LIS recipients who are selected for active review to determine if they will re-qualify for the LIS in the following year. Beneficiaries who receive the form **must** complete and return it to SSA within 30 days. The recipient may contact the field office within the 30 day period to request a one-time extension of up to 30 days. If the form is not returned within 30 days, SSA will notify the recipient that their subsidy will be terminated, after due process, effective January 2009. (If the subsidy is terminated, the individual can reapply.)

Once SSA receives the completed form, it reevaluates the beneficiary’s eligibility for the subsidy based on the information provided and a data match with other federal agencies. SSA either approves the same level of subsidy, increases the level of subsidy, decreases the level of subsidy, or terminates the subsidy and notifies the beneficiary of its decision in writing. The beneficiary then has an opportunity to appeal the decision and is entitled to continue receiving the subsidy during the period of the appeal if the appeal is filed within 10 days of receipt of the notice.

Note: Any action taken by SSA will be effective in January of the following calendar year, unless the action is a result of a change in marital status (marriage; death, divorce, annulment or separation from a living-with spouse; or resumption of living together with previously separated spouse). Changes to the benefit due to a change in marital status will take effect in the month after the month in which the information was first reported to SSA.

SSA does not send forms to all LIS recipients who were determined eligible by SSA. Beneficiaries who do not receive the form will be passively re-determined eligible for the Low Income Subsidy for the next calendar year. They do not need to take further action to maintain their subsidy.

There are two groups of beneficiaries that will receive a 1026 form: 1) those who receive the form as part of the “initial redetermination” process and 2) those who receive the form as part of the “cyclical redetermination” process.

Initial Redetermination. Participants in the initial redetermination process will be chosen from those beneficiaries who were determined eligible for the LIS between May of the previous year and April of the current year. For example, the initial redetermination process in the fall of 2008 will select beneficiaries who were determined eligible between

⁷ See www.ssa.gov/prescriptionhelp/SSA-1026B-OCR-SM-INST.pdf and www.ssa.gov/pubs/10111.pdf.

May 2007 and April 2008. Not all of these beneficiaries will receive a form. Only beneficiaries who meet the following criteria will receive a 1026:

- Beneficiaries for whom SSA data indicate a potential change in subsidy.
- Beneficiaries who receive in-kind support and maintenance.
- Beneficiaries who are members of a couple with different filing dates or different subsidy amounts.
- Beneficiaries who reported an event that could impact LIS eligibility or amount (such as a change in income or assets).
- Beneficiaries who did not respond to a request by SSA's Office of Quality Performance for review of eligibility.
- Beneficiaries for whom the Office of Quality Performance found errors in their record.

Cyclical redetermination. Participants in the cyclical redetermination process are chosen from all LIS recipients, including those that were determined eligible for the LIS in previous years. Beneficiaries receive the 1026 if, according to SSA, they fit the profile of an individual who is more likely to have a change in household size or finances that would affect eligibility for the LIS. The cyclical redetermination includes:

- Beneficiaries who are members of a couple with different filing dates or different subsidy amounts.
- Beneficiaries who reported an event that could impact LIS eligibility or amount (such as a change in income or assets);
- Beneficiaries who did not respond to a request by SSA's Office of Quality Performance for review of eligibility;
- Beneficiaries for whom the Office of Quality Performance found errors in their record.

The process for SSA redetermination is found in the Program Operations Manual System (POMS).⁸

5. What happens to individuals who lose their LIS?

Individuals who are not able to reestablish LIS eligibility, will receive their Part D benefits just as another non-LIS beneficiary as of January of the next calendar year. These individuals will remain in the plan in which they were enrolled and will have to begin paying the monthly premium, deductible and co-payments required by that plan.

Individuals losing the LIS are, however, treated differently than other non-LIS beneficiaries in one important respect. These individuals are granted a Special Enrollment Period (SEP) from January 1 to March 31. The SEP offers qualifying

⁸ See <https://s044a90.ssa.gov/apps10/poms.nsf/lnx/0603050000!opendocument>.

individuals the opportunity to make one election outside the usual fall annual enrollment period. Individuals can switch plans, enroll in Part D or disenroll from Part D during this SEP.

Note: Beneficiaries who are determined eligible for the LIS may lose their subsidy during the calendar year due to a change in marital status. These beneficiaries are granted a three month SEP starting on the first day of the first month in which they no longer receive LIS benefits.

Individuals who lose their deemed status and remain in their plans may be granted a 3 month grace period by the plan if they can demonstrate that they have applied for the LIS. Plans that choose to offer this grace period must offer it to all enrollees who have lost their deemed status, but have submitted a LIS application to SSA. Plans cannot, however, apply the grace period automatically. They must obtain verbal or written confirmation that the enrollee has submitted an application for the LIS. During the grace period, these individuals continue to receive benefits as if they still had the subsidy. If by the end of the grace period, CMS systems still do not reflect LIS eligibility and the individual has not presented Best Available Evidence (see below) demonstrating LIS eligibility, plans are required to recoup unpaid premiums and cost-sharing retroactive to the beginning of the grace period.

6. When are beneficiaries who regain LIS entitled to benefits at the pharmacy?

Individuals who are able to reestablish LIS eligibility are entitled to receive the benefits of the LIS immediately at the pharmacy counter. Due to data transfer problems, however, there may be instances in which CMS and plan computer systems do not immediately reflect the renewed LIS eligibility. In these cases, the Best Available Evidence policy⁹ requires plans to rely on information provided by the beneficiary (e.g. a Medicaid card, a LIS award letter from SSA, etc.) to reduce premiums and cost-sharing. Under the policy, plans are also required to take action to confirm the LIS eligibility of beneficiaries who think they are Medicaid eligible, but are unable to provide proof.

7. Special Considerations for Beneficiaries with a Share of Cost/ Spend Down

The redeeming process has a significant impact on beneficiaries with a “Share of Cost” (SOC) who have not yet met their SOC. Beneficiaries with a SOC are medically needy beneficiaries who have incomes over the allowable Medicaid limits. These beneficiaries can “spend down” their excess income in order to become eligible for Medicaid. In some states SOC is referred to as “spend down.”

For beneficiaries with a SOC who, prior to becoming eligible for Medicare, relied primarily on prescription drug expenses to meet their SOC, the extra help they receive under the LIS may make it more difficult to meet their SOC. Beneficiaries who do not

⁹ The latest version of the BAE policy is outlined in a memorandum to plans dated August 18, 2008. The memorandum is available at, www.cms.hhs.gov/PrescriptionDrugCovContra/17_Best_Available_Evidence_Policy.asp.

meet their SOC in July through December will not be redeemed for the next calendar year.

Beneficiaries who are able to meet their SOC in any month from July through December will appear on the state file transmitted to CMS once they meet it and will be deemed eligible for the full subsidy for all of the next calendar year.

Beneficiaries who cannot meet their SOC during July-December have several options.

A. Apply for a Medicare Savings Program. Many beneficiaries who have a SOC for full Medicaid have income low enough to qualify for a Medicare Savings Program. If the beneficiary qualifies for a MSP in the Fall, he or she will automatically be deemed eligible for the full LIS for all of the next calendar year. For more information on Medicaid Savings Programs eligibility see:
www.cms.hhs.gov/States/Downloads/MSPEligibilityCriteriaChart.pdf

B. Affirmatively apply for the LIS through the state or SSA. Beneficiaries who are not redeemed may apply for the LIS through the state or SSA. Beneficiaries who do not qualify for Medicaid or an MSP because of excess income may still qualify for one of the partial subsidies offered under the LIS. The partial subsidy is not as good as the one provided to full benefit dual eligibles and could include a deductible, premium and co-payments above \$5.60. If the beneficiary has the LIS in the current year and is found eligible for a different subsidy level by SSA in the Fall, the new subsidy level will take effect on January 1 of the following year. For some beneficiaries, these increased costs may be enough to allow them to meet their SOC again and become eligible for the full subsidy from the month they meet their SOC.

Pros: Applying early for the LIS through SSA or the state Medicaid agency before the end of the current enrollment year will ensure that the individual's new LIS eligibility is in the computer system for January 1 of the next calendar year.

Cons: Most SOC beneficiaries who have not yet met their SOC will only qualify for the partial subsidy – a level of subsidy which is not as good as the full subsidy the individual received by meeting their SOC and being deemed eligible for the LIS. Additionally, being on the partial subsidy may decrease the beneficiaries' expenses just enough to make it difficult for them to incur enough costs to meet their SOC.

C. Do nothing during the Fall and meet the SOC during the next calendar year. Many beneficiaries would be able to meet their SOC if not for the extra help they receive from the LIS. If these beneficiaries do not meet their SOC between July and December and do not otherwise affirmatively apply for the subsidy, they will lose the LIS effective January 1 of the next calendar year. In January, with their premium payments, initial deductible and higher co-payments, they could then meet their SOC and be deemed eligible for the full subsidy for the entire calendar year.

Note: As a backup, these beneficiaries should apply for the LIS in January (or at least secure an application date). If, for any reason, they fail to meet their SOC in January, they will have their partial LIS subsidy available retroactive to January 1 (assuming they qualify for the LIS).

Pros: Without the LIS, the beneficiaries' drug costs may increase enough to meet their SOC in January and thus qualify for the full subsidy for the entire calendar year, rather than just a partial subsidy.

Cons:

- Part D plan benefits, even without the LIS, may still keep some beneficiaries from incurring enough prescription expenses to reach their SOC.
- Even if an individual does incur sufficient medical expenses to meet the SOC, the amount spent in January must be compared to the expected savings between the full subsidy and partial subsidy (assuming the individual qualifies for a partial subsidy) over the full year in order to determine whether this plan leaves an individual better off.¹⁰
- The computer systems that communicate information about the LIS eligibility do not operate quickly or smoothly. While a beneficiary may meet their SOC in January, it may take a number of months before the information makes its way to the beneficiary's plan. In the meantime, the beneficiary may have problems paying the out-of-pocket costs for medications. While reimbursement will eventually be available for these out-of-pocket costs,¹¹ it could be a number of months before the beneficiary actually receives the reimbursement.

D. Drop Part D coverage completely effective January 1 and meet the SOC in January. Even without any LIS, some beneficiaries enrolled in Part D may still have trouble meeting their SOC. These beneficiaries could consider dropping their Part D coverage completely effective January 1. They could then meet their SOC in January by paying their entire prescription drug costs out-of-pocket and be deemed eligible for the LIS for the entire calendar year. As full benefit duals, they would then be auto-enrolled into a plan retroactive to January 1. They could stay in the plan into which they were auto-enrolled or switch to a new plan.

¹⁰ The availability of retroactive reimbursement for Part D expenses used to meet the SOC is unclear. Generally, federal Medicaid law does not allow for a federal program to reimburse the individual for the expenses incurred to meet the SOC, however, the current Part D computer system has no way of determining which costs were part of the beneficiary's SOC. The Part D plan is not even likely to know that the individual had to meet a SOC in order to qualify for the LIS. Therefore, it is not unlikely, under the current system, that a beneficiary who meets their SOC using Part D covered prescription drug expenses would be able to receive reimbursement of the SOC amount from the Part D plan that is eventually assigned to or chosen by the beneficiary.

¹¹ Part D plans are required to retroactively reimburse the beneficiary for covered out-of-pocket costs incurred on Part D covered drugs during a period in which the beneficiary was retroactively eligible for the LIS (or for a higher level of LIS). This is a clear rule for costs beyond the SOC amount. See Footnote 4 regarding the availability of retroactive reimbursement for Part D expenses used to meet the SOC.

Beneficiaries exercising this option should be aware that the enrollment and disenrollment computer system is inefficient and often inaccurate. Beneficiaries are likely to experience significant time lags between the month they meet their SOC and the month in which they are actually enrolled in a Part D plan with the LIS. In the meantime, beneficiaries will be responsible for all of their prescription costs and, while retroactive reimbursement of these costs will eventually be provided,¹² it could take many months.

As with option C above, these beneficiaries, as a backup, should apply for LIS in January. If they fail to meet their SOC, but qualify for LIS, they get the benefits of the LIS along with a Special Enrollment Period allowing them to reenroll in a Part D plan. However, the SEP does not begin until the month in which the beneficiary is found eligible for the LIS and enrollment would take effect on the first day of the month after the first month of eligibility at the earliest. This would leave the beneficiary with no Part D plan for January and, therefore, no opportunity for reimbursement of any costs incurred in January. The beneficiary would likely be without a plan or an opportunity for reimbursement in February as well since LIS applications usually take at least two months for the SSA to process.

The Pros and Cons for option C apply to Option D as well. Option D would allow individuals to meet their SOC faster by removing any savings the beneficiary would receive by being enrolled in a Part D plan. However, **beneficiaries and advocates should take great care when deciding whether or not it is advantageous to drop Part D coverage completely.** If they fail to meet their SOC, they could find themselves outside an enrollment period (though the Special Enrollment Period granted to individuals losing their LIS and discussed above should help) and unable to rejoin a plan. This could leave them without coverage and also with late enrollment penalties.

Note: As mentioned above, beneficiaries losing their LIS are granted a Special Enrollment Period from January 1 to March 31. SOC individuals could use this enrollment period to pick a Part D plan. So whether they eventually qualify for LIS or not, they will have an opportunity to enroll in a plan. However, enrollment decisions made in January would not be effective until February 1 and would only be retroactive to January 1 if the individual actually meets their SOC in January. Therefore, individuals exercising this option who do not meet their SOC would be without any coverage (or opportunity for reimbursement) in January.

For all of these reasons, **it is not recommended that beneficiaries consider dropping Part D coverage except when they are absolutely sure that they will meet their SOC.**

¹² See Footnote 11.

Applying for the LIS as a Backup for Options D and E: As noted above, the beneficiary and/or advocate utilizing either of these last two options (D or E) should take additional steps to protect the beneficiary. In January, the beneficiary should apply for the LIS through SSA. It will take at least a month for the application to be processed, but when it is, eligibility will date back to January 1. In the meantime, the individual would incur higher costs in order to meet the SOC. If the individual is able to meet the SOC and is deemed eligible for the LIS, this deeming will take priority over the SSA application. If the individual does not meet the SOC, the SSA application would act as a back-up. Individuals who drop their Part D plan entirely, who do not meet their SOC and do not qualify for the LIS must remember to reenroll in a plan by March 31 (the end of the Special Enrollment Period for individuals losing the LIS). If they do not reenroll by March 31, they could find themselves without any opportunity to join a plan until the next Annual Enrollment Period (November).

There is no one answer for beneficiaries with a SOC who are going through the redeeming process. Each beneficiary's situation is different. For each beneficiary, advocates should weigh 1) the costs the beneficiary would incur throughout the year on a partial or no subsidy versus 2) the amount of the SOC¹³ plus the costs the beneficiary would incur throughout the year on the full subsidy. The advocate must also, of course, consider the beneficiary's desire for a secure, predictable benefit as well as the beneficiary's ability to pay for medications out-of-pocket while waiting for the computer systems to update enrollment and LIS information.

If you have questions on the redetermination/redeeming process please contact Kevin Prindiville (kprindiville@nslc.org, 510-663-1055, ext. 307) or Anna Rich (arich@nslc.org, 510-663-1055, ext. 305) in NSCLC's Oakland office.

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¹³ Remember, as mentioned in Footnote 10, it may be possible for the beneficiary to obtain retroactive reimbursement for SOC expenses incurred on Part D covered drugs from the Part D plan.