§ 423.760 Determinations regarding the amount of civil money penalties and assessment imposed by CMS.

(a) Determining the appropriate amount of any penalty. In determining the amount of penalty imposed under 423.752(c)(1), CMS will consider as appropriate:

1. The nature of the conduct;
2. The degree of culpability of the Part D sponsor;
3. The harm which resulted or could have resulted from the conduct of the Part D sponsor;
4. The financial condition of the Part D sponsor;
5. The history of prior offenses by the Part D sponsor or principals of the Part D sponsor; and,
6. Such other matters as justice may require.

(b) Amount of penalty. CMS may impose civil money penalties in the following amounts:

1. 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 enrollees—up to $25,000 for each determination.
2. 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 enrollees, CMS may calculate a CMP of up to $25,000 for each Part D enrollee directly adversely affected (or with a substantial likelihood of being adversely affected) by a deficiency.
3. 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.
4. If CMS makes a determination that a Part D sponsor has terminated its contract other than in a manner described under 423.510 and that the Part D sponsor has therefore failed to substantially carry out the terms of the contract, $250 per Medicare enrollee from the terminated Part D sponsor or plans at the time the Part D sponsor terminated its contract, or $100,000, whichever is greater.

§ 423.762 Settlement of penalties.

For civil money penalties imposed by CMS, CMS may settle civil money penalty cases at any time before a final decision is rendered.

§ 423.764 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.

Best available evidence means evidence recognized by CMS as documentation or other information that is directly tied to State or Social Security Administration systems that confirm an individual’s low-income subsidy eligibility status, and that must be accepted and used by the Part D sponsor to change low-income subsidy status.

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.
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 defined by section 1612 of the Act) and exempts support and maintenance furnished in kind. 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.

Individual receiving home and community-based services means a full-benefit dual-eligible individual who is receiving services under a home and community-based program authorized for a State in accordance with one of the following:

(1) Section 1115 of the Act.
(2) Section 1915(c) or (d) of the Act.
(3) State plan amendment under section 1915(i) of the Act.
(4) Services are provided through enrollment in a Medicaid managed care organization with a contract under section 1903(m) of the Act or section 1932 of the Act.

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. It exempts the value of any life insurance policy.

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