based on prior enrollment. New MA-PD plans are assigned a zero weight. PACE, private fee-for-service plans and 1876 cost plans are not included.

(d) Other low-income subsidy eligible individuals—sliding scale premium. Other low-income subsidy eligible individuals are entitled to a premium subsidy based on a linear sliding scale ranging from 100 percent of the premium subsidy amount described in paragraph (b) of this section as follows:

(1) For individuals with income at or below 135 percent of the FPL applicable to their family size, the full premium subsidy amount.

(2) For individuals with income greater than 135 percent but at or below 140 percent of the FPL applicable to the family size, a premium subsidy equal to 75 percent of the premium subsidy amount.

(3) For individual with income greater than 140 percent but at or below 145 percent of the FPL applicable to the family size a premium subsidy equal to 50 percent of the premium subsidy amount.

(4) For individuals with income greater than 145 percent but below 150 percent of FPL applicable to the family size a premium subsidy equal to 25 percent of the premium subsidy amount.

(e) Waiver of late enrollment penalty for subsidy-eligible individuals. Subsidy eligible individuals, as defined in §423.773, are not subject to a late enrollment penalty, as defined in §423.46.

(f) Waiver of de minimis premium amounts. CMS will permit a Part D plan to waive a de minimis amount that is above the monthly beneficiary premium defined in §423.780(b)(2)(i)(A) or (B) for full subsidy individuals as defined in §423.780(a) or §423.780(d)(1), provided waiving the de minimis amount results in a monthly beneficiary premium that is equal to the established low income benchmark as defined in §423.780(b)(2).

§423.782 Cost-sharing subsidy.

(a) Full subsidy eligible individuals. Full subsidy eligible individuals are entitled to the following:

(1) Elimination of the annual deductible under §423.104(d)(1).

(2) Reduction in cost-sharing for all covered Part D drugs covered under the PDP or MA-PD plan below the out-of-pocket limit (under §423.104), including Part D drugs covered under the PDP or MA-PD plan obtained after the initial coverage limit (under §423.104(d)(4)), as follows:

(i) Except as provided under paragraphs (a)(2)(ii) and (a)(2)(iii) of this section, copayment amounts not to exceed the copayment amounts specified in §423.104(d)(5)(A). This applies to both:

(A) those full-benefit dual eligible individuals who are not institutionalized and who have income above 100 percent of the Federal poverty line applicable to the individual’s family size and

(B) those individuals who have income under 135 percent of the Federal poverty line applicable to the individual’s family size who meet the resources test described at §423.773(b)(2).

(ii) Full-benefit dual-eligible individuals who are institutionalized or who are receiving home and community-based services have no cost-sharing for Part D drugs covered under their PDP or MA–PD plans.

(iii) Full-benefit dual eligible individuals with incomes that do not exceed 100 percent of the Federal poverty line applicable to the individual’s family size are subject to cost-sharing for covered Part D drugs equal to the lesser of:

(A) A copayment amount of not more than $1 for a generic drug or preferred drugs that are multiple source (as defined under section 1927(k)(7)(A)(i) of the Act) or $3 for any other drug in 2006, or for years after 2006 the amounts specified in this paragraph (a)(2)(ii)(A) for the percentage increase in the Consumer Price Index, rounded to the nearest multiple of 5 cents or 10 cents, respectively; or

(B) The copayment amount charged to other individuals under this paragraph (a)(2)(i) of this section.

(3) Elimination of all cost-sharing for covered Part D drugs covered under the
PDP or MA-PD plan above the out-of-pocket limit (under § 423.104(d)(5)).

(b) Other low-income subsidy eligible individuals. Other low-income subsidy eligible individuals are entitled to the following:

(1) In 2006, reduction in the annual deductible to $50. This amount is increased each year beginning in 2007 by the annual percentage increase in average per capita aggregate expenditures for Part D drugs, rounded to the nearest multiple of $1.

(2) Fifteen percent coinsurance for all covered Part D drugs obtained after the annual deductible under the plan up to the out-of-pocket limit (under § 423.104(d)(5)(iii)).

(3) For covered Part D drugs above the out-of-pocket limit (under § 423.104(d)(5)(iii)), in 2006, copayments not to exceed $2 for a generic drug or preferred drugs that are multiple source drugs (as defined under section 1927(k)(7)(A)(i) of the Act) and $5 for any other drug. For years beginning in 2007, the amounts specified in section paragraph (b)(3) for the previous year increased by the annual percentage increase in average per capita aggregate expenditures for covered Part D drugs, rounded to the nearest multiple of 5 cents.

(c) When the out-of-pocket cost for a covered Part D drug under a Part D sponsor’s plan benefit package is less than the maximum allowable copayment, coinsurance or deductible amounts under paragraphs (a) and (b) of this section, the Part D sponsor may only charge the lower benefit package amount.

(d) Use of the best available evidence process to establish cost-sharing. Part D sponsors must—

(1) Accept best available evidence as defined in § 423.772 of this part received from beneficiaries or other individuals acting directly on their behalf; and

(2) Update the subsidy eligible individual’s LIS status, and respond to requests for assistance in securing acceptable evidence of subsidy eligibility from beneficiaries or other individuals acting directly on their behalf in accordance with the process(es) established by CMS, and within the reasonable timeframe(s) as determined by CMS.

(e) Timeframe for refunds and recoveries due to retroactive adjustments to cost sharing. Sponsors must process retroactive adjustments to cost-sharing for low-income subsidy eligible individuals and any resulting refunds and recoveries in accordance with the timeframe specified in § 423.466(a) of this part.