

NEW YORK COALITION TO PROTECT LIS ENROLLEE RIGHTS

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Kathleen Kuhmerker, Deputy Commissioner
New York State Department of Health
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NYS Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

Dear Ms. Kuhmerker,

We write regarding the June 21, 2005 General Information System (GIS) 05 MA-024. The GIS instructs local Medicaid offices to direct individuals interested in the Medicare Part D Low Income Subsidy (LIS), but not eligible for Medicare Savings Programs (MSPs), to the local Office for the Aging, 1-800 MEDICARE or the Social Security Administration (SSA) Office. The undersigned organizations are concerned that individuals eligible for the LIS will be turned away from Medicaid offices and may never apply for the benefit. As you know, the LIS benefits help defray the high costs of prescription drugs and high cost-sharing associated with the new Part D drug benefit. We hope to collaborate with you to assure that all eligible individuals are enrolled in the benefit.

As we continue to coordinate our outreach efforts with government partners, we are mindful that an integral part of effective outreach is effective enrollment. While many individuals will likely benefit from the expedited LIS enrollment available through Social Security offices, some individuals will attempt to apply at the Medicaid offices. We must work together to assure that we do not miss an opportunity to screen and enroll all eligible individuals for the LIS. Further, as discussed below, some people with Medicare will benefit from a state enrollment process that coordinates access to the LIS program with screening for MSPs.

As discussed below, both LIS enrollment and MSP screening are state responsibilities. We look forward to working with you on how the State can meet its responsibilities and most effectively assist those who would benefit from a state process for LIS enrollment.

LIS ENROLLMENT IS A STATE RESPONSIBILITY

As you know, federal law, regulations, and CMS guidance require states to accept and process LIS applications.¹ For example, section 42 C.F.R. § 423.904 provides:

¹ 42 U.S.C. § 1395w-114(a)(3)(B)(i); 42 C.F.R. §§ 423.774(a), 432.904, and Preamble.

Eligibility determinations for low-income subsidies.

(d) Application form and process.

(1) Assistance with application. No later than July 1, 2005, States must make available--

- (i) Low-income subsidy application forms;
- (ii) Information on the nature of, and eligibility requirements for the subsidies under this section; and
- (iii) Assistance with completion of low-income subsidy application forms.

CMS echoes this language in its May 25, 2005 Guidance on Low Income Subsidy. Section 10.3.3 of the guidance provides:

[If] . . . [an] applicant insists on filing with the State prior to an SSA [LIS determination]. . . , the State must comply. If an individual requests a State determination or refuses to use the SSA application, the State must use its own application and process the case using Federal Low-Income Subsidy income, family size, and resource rules, but the State's process for taking applications. The State is then responsible for notices, appeals, and redeterminations for subsidy cases it has determined using a State application form.²

The preamble to the final regulations implementing the Medicare Prescription Drug, Improvement and Modernization Act,³ specifies that CMS “. . . expect[s] that the State will have an important role in educating Medicare beneficiaries . . . about the low-income subsidy and the new Medicare drug benefit.”⁴ The preamble further states that “States must have the ability to determine eligibility if someone requests a ‘State’ subsidy determination. . . . [I]f [individuals] do apply in person at a State office, the State would be obligated to assist individuals in completing the [LIS] application”⁵

SCREENING FOR MSP ELIGIBILITY IS A STATE RESPONSIBILITY

Federal law requires states to screen individuals who apply for Part D subsidies for eligibility for Medicaid programs that provide assistance with Medicare cost-sharing (i.e., QMB, SLMB and QI-1).⁶ New York State requires local Medicaid offices to screen for MSP eligibility, as was recently confirmed in GIS 05 MA/033 (August 22nd, 2005), which provides: “Districts are reminded that eligibility for the MSPs must be determined even if an applicant does not indicate that he or she is applying for the MSP. . . .”

² Sec. 10.3.3 of CMS Guidance on Low Income Subsidy <http://www.cms.hhs.gov/medicarereform/guidance5-25-05.pdf>.

³ P.L. No. 108-173.

⁴ 70 Fed. Reg. 4377 (January 28, 2005).

⁵ *Id.*, at 4381.

⁶ 42 C.F.R. § 423.904

Clarification is needed in order to ensure that local Districts are clear that their responsibility to screen for MSP eligibility extends not only to individuals applying for Medicaid, but to individuals who arrive in their office and inquire about applying for the LIS benefit under Medicare Part D.

In addition, screening all individuals for MSPs does not substitute for allowing individuals to apply for LIS. The law cited above requires the State to actively screen for and allow for enrollment in both MSPs and LIS. As discussed below, some individuals will benefit from applying for LIS at a Medicaid office. Additionally, reliance on SSA enrollment alone will fail to reach all LIS eligible individuals, as evidenced by the fact that only 15% of individuals who received an LIS application from SSA have actually applied for the LIS benefit.⁷ State involvement in the LIS application process is crucial to the success of the LIS program.

LOW-INCOME MEDICARE RECIPIENTS WILL BE HURT BY THE LACK OF A STATE PROCESS

We are concerned about three groups of low-income Medicare recipients who will suffer harm without a state determination process. The first group of individuals we are concerned about are low-income Medicare recipients who may be eligible for the Qualified Medicare Beneficiary (QMB) program. Because the QMB program is not retroactive to the date of application (but rather takes effect the month following the month of application), these individuals would benefit from a state eligibility determination that processes information for both the LIS and the QMB program. If they are limited to applying for QMB at the Local Department of Social Services (LDSS), they will miss the opportunity to recover payments made for prescription drugs during the month of application. If they are merely referred to SSA, they will fail to gain access to the QMB program.

The second group is comprised of those low-income Medicare recipients who may qualify for the Qualifying Individual (QI) program⁸. We were pleased to see that New York State Department of Health (DOH) recognizes that many low-income individuals with assets above the LIS limits will benefit from a state eligibility determination that processes information for QI, since eligibility for the QI program will automatically qualify them for the LIS. However, we are concerned that individuals who are income and resource eligible for LIS and QI will experience gaps in coverage with a state program that does not determine their eligibility for both programs. Similarly, if these recipients are merely referred to SSA, they may fail to gain access to both the QI program and the LIS.

The third group of individuals are those who are ineligible for the MSPs due to an income above 135% of poverty, but are eligible for LIS. When these individuals present themselves at a Medicaid office, they should not be directed to another office, but should be given an application for, and be provided assistance with, the LIS benefit. Reliance on the MSP process as an entrée into the LIS benefit will simply not work for this group of individuals.

CURRENT NYS DEPARTMENT OF HEALTH POLICY

⁷ Social Security Administration, *Subsidy Application Data By State* (September 19, 2005)

⁸ 42 U.S.C. 1396a(a)(10)(E)(iii).

Over the past two months, we have attempted to work with you to better understand DOH's positions and legal interpretations. At a June 8, 2005 meeting with advocacy groups, including several of the undersigned agencies, you explained that the DOH would adapt the QI application to elicit information needed to establish eligibility for the LIS, such as living with dependent family members, etc. On its face, the June 21st GIS signaled a departure from this plan, or at least a significant delay, by stating that Medicaid offices now would not be required to accept and process LIS applications. This appeared to be confirmed at the July 6th meeting of the New York Medicare Savings Program Coalition. At the meeting, DOH representatives indicated that the local Medicaid offices would not even have the SSA application form available, let alone provide assistance to individuals with the SSA LIS application.

We have since been informed that the Department is working to construct the system supports that are necessary for state LIS eligibility determinations at LDSSs. We understand that you are also considering making LIS applications available at the LDSS offices and that you do plan to add information about the LIS to denial and discontinuance notices regarding state programs.

While we appreciate the demands the Part D program places on state systems, we are concerned that these steps will fail to alleviate the harm our clients will suffer in the absence of a state process for determining LIS eligibility in tandem with eligibility for MSPs or other state programs. We are concerned that the current state policy fails to comply with the federal authority cited above. We also believe that this policy undermines much of our outreach and educational efforts. Thus, we seek to work with you to design a reasonable and compliant policy.

To that end, we are requesting a meeting as soon as possible to attempt to reconcile our divergent views of CMS guidance and work together to provide the best assistance possible to this vulnerable group of New Yorkers. We look forward to working with you. If you have any questions about this letter, please contact Lisa Sbrana of the Legal Aid Society at (212) 577-3394 or Trilby deJung of the Empire Justice Center at (585) 295-5722.

Sincerely yours,

Edo Banach, Medicare Rights Center
Valerie J. Bogart, Selfhelp Community Services, Inc.
Lisa Sbrana, The Legal Aid Society
Trilby de Jung, Empire Justice Center
Denise Soffel, Community Service Society

On behalf of:
[list organizations]

cc: Robin Johnson, DOH

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