

**MEMORANDUM IN SUPPORT  
A. 9007B Part SS  
S8228/A9245 (May/Gottfried)**

*Expands eligibility for the three Medicare Savings Programs by disregarding certain countable income for certain Medicare beneficiaries.*

**The New York Legal Assistance Group (NYLAG) supports this legislation.**

*NYLAG uses the power of the law to help New Yorkers in need combat social and economic injustice. We address emerging and urgent legal needs with comprehensive, free civil legal services, impact litigation, policy advocacy, and community education. Among free legal services we provide is representation of older persons and people with disabilities in retaining Medicaid eligibility and accessing Medicaid home care services in order to live safely in their homes and avoid institutionalization.*

NYLAG supports Part SS of the Assembly One-House Budget Bill (A. 9007B) and S8228/A9245, which propose to increase the income limits of the three Medicare Savings Programs (“MSP”). NYLAG strongly supports Part N of the Governor’s FY 2023 Article VII Legislation, increasing the Medicaid limits for Aged, Blind and Disabled to the same levels afforded by the Affordable Care Act for young people. However, the Article VII bill did not increase the MSP income limits, causing a disparity between the expanded Medicaid limits and the MSP program. The proposed changes in the Assembly bill will cause no increased costs for the State beyond the cost of the Medicaid expansion.

**Background.** Low income older adults and people with disabilities nationwide may qualify for one of three levels of Medicare Savings Programs (MSP). MSPs provide these individuals crucial financial support by defraying Medicare costs. There are three main benefits from MSPs:

1. All three MSP levels pay the Part B premium, now \$170.10/month. This is an increase of 62% just since 2015 when the premium was only \$104.90/month. This monthly cost is a huge burden, with a disproportionate impact on people of color and people with disabilities who are more likely to have low income and assets.
2. One of the MSP levels—Qualified Medicaid Beneficiary (QMB)—also covers Medicare Parts A and B copays, coinsurance and deductibles. QMB also protects the beneficiary from being “balance billed” for the Medicare coinsurance by a provider who does not accept payment from the QMB program (QMB will only pay providers who accept Medicaid).
3. All MSP members, regardless of level, are automatically enrolled in the Full Low Income Subsidy (LIS) for Part D, also known as “Extra Help,” which is *fully funded* by the federal government, and by SSA’s estimate saves consumers \$5,000 per year. This subsidy defrays state expenditures for the state-funded EPIC prescription drug subsidy.
4. Enrollment in MSP erases “Late Enrollment Penalties” for someone who mistakenly enrolled in Medicare Part B late. Those Medicare enrollment rules are very complicated and cause a lot of confusion, leading to late enrollment with hefty penalties that are added to the monthly premium.

<b>The Three Levels of MSP, Their Benefits, and Current and Proposed Income Limits</b>						
	Current income limit (% FPL)	Assembly Bill proposed increases	Pays Part B premium (\$170.10/mo.)	Extra Help for Part D	Waives Medicare Late Enrollment Penalties	Pays Medicare deductibles and coinsurance & Protects against Balance Billing
<b>QMB</b>	100%	120%	✓	✓	✓	✓
<b>SLIMB</b>	120%	138%	✓	✓	✓	<b>NO</b>
<b>QI</b>	135%	156%	✓	✓	✓	<b>NO</b>

New York’s MSP program should be updated to keep pace with the Governor’s Budget proposal to expand Medicaid eligibility for people age 65+ and people with disabilities to 138% of the Federal Poverty Level (“FPL”). This will ensure thousands of older adults and people with disabilities continue to be able to access MSP. A clear example of this is the QI-1 level of MSP, which is now limited to those with incomes between 120% and 135% FPL. Federal law precludes enrollment in QI-1 and Medicaid concurrently, so that under the Governor’s Budget a consumer whose income is between 120% and 135% FPL will have to choose between Medicaid and MSP; they cannot have both. Those with incomes between 135% and 138% FPL will not qualify for the MSP program at all. But – denying them MSP benefits will not save the State money, because the State must reimburse all Medicaid recipients for the Part B premium anyway under the MIPP program.<sup>1</sup> This is a cumbersome procedure that harms consumers because the Part B premium is withheld from their Social Security checks. The State sends them a reimbursement check months later.

The Assembly one-house bill and S8228/A9245 will align the MSP programs with the Medicaid expansion, and ensure that all who have full Medicaid will also be in the QMB or SLIMB MSP program. The proposed changes in eligibility are further summarized in the chart below.

<b>FPL</b>	<b>Income Limit/Mo.</b>		<b>Medicaid and/or MSP Eligibility</b>		
	Single	Couple	<b>Current</b>	<b>Gov. proposal</b>	<b>Gov. + Assembly</b>
Below 85%	\$934	\$1,367	Medicaid + QMB	Medicaid + QMB	Medicaid+QMB
86% - 100%	\$1,133	\$1,526	QMB only*	Medicaid + QMB	Medicaid+QMB
101%-120%	\$1,359	\$1,831	SLIMB only*	Medicaid + SLIMB	Medicaid+QMB
121 – 135%	\$1,529	\$2,060	QI*	Must Choose Medicaid OR QI**	Medicaid+SLIMB
136 -- 138%	\$1,563	\$2,106	<b>Not eligible*</b>	Medicaid only; not eligible for MSP**	Medicaid+SLIMB
138 - 156%	\$1,767	\$2,380	<b>Not eligible*</b>	<b>Not eligible*</b>	<b>QI only*</b>

\* May qualify for Medicaid in the Excess income program, but only for months in which they “spend down” the excess income on medical bills. Those with income at QI-level must choose between Medicaid with a spend-down or QI; they may not have both.

\*\* Even if they are not eligible for an MSP, NYS will have to reimburse those with full Medicaid for the Part B premium. See n 1.

**The Assembly Budget Proposal and S8228/A9245 will be at NO COST to the State.**

The Assembly's bill proposes modest increases in the MSP income limits that will require no additional State costs not already calculated in the Medicaid eligibility expansion.

1. **QMB** – Since QMB covers not only the monthly Part B premium, but also Medicare coinsurance and deductibles, one might expect a State cost with raising the income level from 100% FPL to 120% FPL. However, there is no State cost because all the newly eligible QMB enrollees will also be eligible for Medicaid under the expanded limits. Medicaid covers Medicare coinsurance and deductibles, so there is no added state cost for QMB.
2. **SLIMB** – Since all newly eligible SLIMB enrollees will also be eligible for Medicaid under the expanded limit of 138% FPL, Medicaid must cover the cost of their Part B premium anyway (*See foot note 1*). Also, many of those newly eligible for SLIMB under the expanded limits were already receiving MSP through the QI program.
3. **QI-1** – The QI-1 expansion from 135% FPL to 156% FPL is fully covered by the federal government. There is 100 percent federal participation for this program. Thus there is no state cost. Additionally, many of the newly eligible QI-1 enrollees were already in the EPIC program, a state Part D prescription drug subsidy that is fully state-funded. Since MSP eligibility automatically qualifies individuals for Full Extra Help, the fully-federally funded prescription drug subsidy, the MSP expansion will reduce EPIC costs by an estimated \$25 million.

Other states have made more generous increases in their MSP programs. Washington DC raised its QMB limit to 300% FPL and Connecticut to 211% FPL.<sup>2</sup>

Part SS of the Assembly one-house bill makes some technical edits in the language of the MSP statute that we support, such as clarifying the definitions of the different MSP programs.

See an additional chart on the next page.

**Based on the foregoing, NYLAG SUPPORTS this legislation.**

**CONTACT:** Valerie Bogart

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Director, Evelyn Frank Legal Resources Program  
NEW YORK LEGAL ASSISTANCE GROUP  
100 Pearl Street 19th floor | New York, NY 10004  
t: 212.613.5047 | f: 212.714.7450  
[vbogart@nylag.org](mailto:vbogart@nylag.org)

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<sup>1</sup> See NYS DOH GIS [02 MA019 - Reimbursement of Health Insurance Premium](https://www.health.ny.gov/health_care/medicaid/publications/docs/gis/02ma019.pdf) (2002), available at [https://www.health.ny.gov/health\\_care/medicaid/publications/docs/gis/02ma019.pdf](https://www.health.ny.gov/health_care/medicaid/publications/docs/gis/02ma019.pdf).

<sup>2</sup> See Kaiser Family Foundation, Eligibility for Medicare Savings Programs for Qualified Medicare Beneficiaries (QMBs)(2018), available at <https://www.kff.org/other/state-indicator/eligibility-for-medicare-savings-programs-for-qualified-medicare-beneficiaries-qmbs/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

Illustration of alignment of Medicaid with MSP – currently, as proposed by the Governor, and as proposed by the Governor with the Assembly proposal.

