




Compliance Corner: Medicare Secondary Payer

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TODAY'S PRESENTERS

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PRETEST & WHAT WE WILL COVER

- Who is eligible for Medicare?
- When does an active at work person who is eligible for Medicare due to age need Part B?
- What is MSP?
- Which employers are subject to MSP?
- When is the group health plan primary when Medicare is due to disability?
- When does MSP status change for an employer?
- What is ESRD?

MORE PRETEST

- Can someone eligible for Medicare contribute to an HSA account?
- When should a person eligible for Medicare purchase Part D?
- What is “creditable coverage” in the context of Medicare Part D?
- Who does not need Part D?

MEDICARE A, B, C, D

- Part A covers hospitals as an inpatient, critical access hospitals , skilled nursing facilities, hospice care, and some home health care
- Part B covers doctors, some preventive, ambulance, outpatient therapy including Mental Health.
- Part C is Medicare Advantage A & B plus extras for a premium
 - May offer extra coverage, such as vision, hearing, dental, and/or health and wellness programs. Most include Medicare prescription drug coverage (Part D). In addition to your Part B premium, you usually pay one monthly premium for the services included
- Part D is prescription drugs

*See the Medicare 2016 Handbook

WHO IS ELIGIBLE?

- People age 65 and older
 - It is “free” to persons and their spouses who have worked 40 Q or 10 years
 - If you don’t automatically get premium-free Part A, you may be able to buy it (more later)
- Deemed Medicare disabled and less than age 65
- People of all ages with End-Stage Renal Disease (ESRD)

INITIAL ENROLLMENT PERIOD

- Initial 7 month enrollment – 3 months before and 3 months after bday
 - If your birthday isn't on the first day of the month, your Part B coverage starts the first day of your birthday month
 - If your birthday is on the first day of the month, your coverage will start the first day of the prior month

3 months before the month you turn 65	2 months before the month you turn 65	1 month before the month you turn 65	The month you turn 65	1 month after you turn 65	2 months after you turn 65	3 months after you turn 65
Sign up early to avoid a delay in getting coverage for Part B services. To get Part B coverage the month you turn 65, you must sign up during the first three months before the month you turn 65.			If you wait until the last four months of your Initial Enrollment Period to sign up for Part B, your start date for coverage will be delayed.			

GENERAL ENROLLMENT

- Part A is only “automatic” for those receiving Social Security
- General Enrollment for persons who did not sign up when first eligible is January 1 –March 31 for an effective date of coverage of July 1.
 - Part A late: 10% penalty for every full 12 months without Part A. The higher premium applies for twice the number of years without Part A, but didn’t sign up. (Medicare Handbook p 34)
 - Example: if eligible 2 years, a 20% additional premium penalty will apply for 4 years
- Part B late: 10% for each full 12 month period could have had part B
 - Example: Mr. Smith’s Initial Enrollment Period ended Sept 30,2012. He waited to sign up for Part B until March 2015 during the General Enrollment Period. His Part B premium penalty is 20%. (Even though Mr. Smith waited a total of 30 months to sign up, this included only 2 full 12-month periods.) He’ll have to pay this penalty for as long as he has Part B.
- Penalty will NOT apply if eligible for Special Enrollment

SPECIAL ENROLLMENT

- Special Enrollment for those who did not enroll when first eligible due to group plan coverage based on **current employment**
 - No late penalty.
 - Can sign up anytime employee is **working and covered** (includes spouse)

-OR-

- During the 8 month period that begins the month after employment ends or coverage ends whichever happens first

Note: COBRA coverage or retiree coverage is not considered “based on current employment”. Special Enrollment does NOT apply

PART A PREMIUM

- Medicare Part A which covers hospital is "free" to those who qualify due to payment of FICA taxes for 40 quarters (10 years) by the Medicare beneficiary or spouse.
- For 2016, If FICA was paid 30-39 quarters, Part A premium is \$226 per month up to a maximum of \$411 per month if FICA was paid for less than 30 quarters.
- The Part A inpatient deductible for 2016 is \$1,288.
- Once the person is inpatient 61-90 days, the daily coinsurance is \$322.
- Skilled Nursing Facility coinsurance for days 21-100 is \$161

PART B PREMIUM

- There is a “hold harmless” for persons collecting SS. Their Part B premium will remain at \$104.90 in 2016, which is unchanged since 2013.
- Those not protected from “hold harmless” will pay \$121.80. They are those not collecting SS, those enrolling into Part B for the first time in 2016, dual eligible whose premium is paid by Medicaid and those who pay extra due to income related premium.
- Part B premium is subject to means testing.
- If the modified adjusted gross income as reported on IRS tax returns from 2 years ago (the most recent tax return information provided to Social Security by the IRS) for an individual is greater than \$85,000 or \$170,000 if married and file jointly, premium will range from \$170.50 to \$389.80.
- The 2016 deductible was \$166.

MEDICARE & COBRA

- Persons retiring who are 65 and over have 8 months to enroll in Part B and 63 days to enroll in Part D (without penalty). This is REGARDLESS of COBRA enrollment, meaning a COBRA election will NOT count as having employer coverage.
- Taking COBRA in place of Medicare will likely result in Medicare penalties and force the member to wait until General Open Enrollment Period regardless of when COBRA expires
- COBRA must be offered to persons having a COBRA event including those working who have already turned age 65. Geissal v Moore June 8 ,1998
- Becoming age 65 and electing Medicare WHILE on COBRA will trigger a termination of COBRA

WHEN EMPLOYMENT ENDS

- COBRA or state continuation is an option. In most cases this is for 18 months.
- Medicare is always primary when no longer active at work. Without Medicare in place, the member will pay out of pocket in most states.
- The 8 month General Enrollment for Part B runs whether or not COBRA is elected . Don't wait until COBRA ends to enroll in Part B.
- Signing up for Part B triggers the 6 month Medigap open enrollment period. This period gives a guaranteed right to buy any Medigap policy in the home state.

MEDICARE DUE TO DISABILITY

- The under 65 and disabled automatically get Part A and Part B after getting disability benefits from Social Security for 24 months.
- The red, white, and blue Medicare card is sent before the 25th month of disability. If the individual does not want Part B, they should follow the instructions that come with the card, and return the card back. If the individual keeps the card, Part B begins and Part B premium is due.

MEDICARE RE-ADMISSION PENALTY

Medicare penalties began in 2013, for hospitals with high patient readmission rates.

MEDICARE ELIGIBLE DUE TO AGE AND ACTIVE AT WORK

- MSP rules determine who pays first for persons covered or eligible to be covered by Medicare
- Each employee on the payroll counts -- fulltime, part time, union and non union
- Self-employed individuals who participate in the employer plan are NOT counted in determining if the group is subject to counting for MSP. Be very careful with who is categorized as "self employed".
- COB rules may differ state to state meaning some states may not permit the carrier to carve out what Medicare Part B would have paid.

MEDICARE DUE TO AGE

- Employers with 20 or more full-time and part time employees for each working day in each of 20 or more calendar weeks (not necessarily consecutive) in the preceding or current calendar year are subject to MSP.
- At the point the employer meets this criteria, claims for an active at work Medicare eligible individual and spouse covered under the group health plan must be paid primary by the group health plan.
- 1) advise the carrier, 2) advise the insured to tell their providers and to present their group plan ID card

EXAMPLE

- Employer has 20 employees for her 20th week on August 1, 2009.
- At that point the health plan is primary for anyone active at work, covered under the health plan and eligible for Medicare due to age
- The spouse is covered the same as the employee
- The employee may waive off the health plan and elect Medicare alone
- When no longer active at work e.g. COBRA, Medicare is always primary

SUBJECT TO MSP

- The plan remains primary for the rest of 2009
- And until 12-31-2010 regardless of how many employees in 2010
- If during 2010, the employer does not have 20 employees, the MSP status changes to Medicare Primary as of January 1, 2011.
- MSP status to non MSP status cannot change during the year
- If any employee in an MSP group presents a Medicare card to the provider and Medicare is billed in error, CMS will recoup the money from the employer (Data Match)
- Best to always alert employees and of course the carrier when MSP status changes!

NOT SUBJECT TO MSP

- Medicare is primary
- If the individual does not have Parts A and B, most carriers carve out what Medicare B would have paid and still pay secondary. They may not carve out Part A.

MEDICARE DUE TO DISABILITY

- Insured in a group of less than 100 total employees
- Medicare is primary... best to have Part B!
- When 100 or more, the group plan is primary
- Regardless of group size, when disability is due to ESRD, the group plan is primary for the first 30 months

See “Who Pays First” publication

WHAT EMPLOYERS MAY NOT DO

- Pay all or part of Medicare Supplements for active employees
 - If subject to MSP rules
- OK to pay for Parts B & D if not subject to MSP
- Allow pre-tax deduction of Medicare Supplements
- Differences based on age or disability
 - Age Discrimination in Employment Act (ADEA)
 - Americans with Disabilities Act (ADA)
- Informal Guidance
 - Cash out under cafeteria plan for all is allowed

PENALTY FOR OFFERING INCENTIVES

- Penalty up to \$5000 per violation
Regardless whether offer is oral or in writing

MEDICARE DATA MATCH

- The Medicare Reporting Mandate of 2007 is a federal mandate with new mandatory reporting requirements for all group health plans, effective January 1, 2009
- The mandate requires all insurers on fully insured plans and TPAs for self-insured to submit information for all employees and dependents age 45 years or older. CMS will use this information to recover payments it made as primary coverage, when the insurer should have provided primary coverage, and to prevent such out-of-turn payments from being made in the future

IRS/SSA/CMS DATA MATCH PROGRAM

- 30 days to complete the form
- Penalties for not completing
 - \$1000 per person
 - Subpoena business records
 - Investigation into medical plans
- Can request medical or Rx data
 - MSP
 - Part D creditability

If violation found Insurer may not pay

MSP REPORTING FOR HRA 10-3-2011

- HRA is a group plan subject to MSP reporting
- Health carriers have had data match since 2009 in order to assure that Medicare is not paying primary when they should not be. Previously TPAs reported plans whose potential maximum benefit was \$1k or more. With the latest change effective 10-3-2011, TPAs must report annual potential benefits of \$5k and greater.
- The fine for not reporting is \$100/day. If the TPA can show they were unable to collect needed data from the employer, the fine goes to the employer
- The future may be that TPAs will 1- charge for the reporting and 2- only write HRAs with values of \$4999 or less

MEDICARE RELATED

Those ENROLLED in Medicare may no longer contribute to an HSA
(Health Savings Account)

Ok to be eligible

Medicare Part A is not mandatory at age 65

Domestic Partners / Civil Unions partners not eligible “spouses” for
COBRA

PART D

The Medicare Prescription Drug Improvement and Modernization Act of 2003, P.L. 108-173, created a prescription drug benefit called Medicare Part D which provides access to prescription drug insurance coverage to individuals who are entitled to (eligible for and enrolled in) Part A OR enrolled in Part B.

Participation is voluntary and requires an affirmative election to join. Coverage opportunity began January 1, 2006.

Open enrollment **CHANGED** in 2011 to October 15th - December 7th.

PART D PREMIUM

- Most drug plans charge a monthly fee that varies by plan. Starting 1-1-2011, the Part D monthly premium will be based on income. If the modified adjusted gross income as reported on the IRS tax return most recently filed is above \$85,000 or an individual or \$170,000 for joint filers, there will be a monthly adjustment in addition to the Part D plan premium. The new surcharge is between \$12 to \$69.10 per month.
- If income has dropped since 2008 the surcharge may be reduced or eliminated if the loss is tied to a life changing event e.g. marriage, divorce, job loss, reduced work hours, cut in pension benefits, or loss of income from income producing property.

MEDICARE PART D NOTIFICATION

- A mandatory creditable v non-creditable notice must be provided by the plan sponsor/ employer to any Medicare eligible person whether due to age or disability
- Includes employees, spouses, dependents, COBRA or state continuants, and retirees.
- Notice must be sent by October 15 in order for individuals to have the opportunity to sign up and avoid late penalty
- ALSO Mandatory notice to CMS online as well within 60 days of the plan year and when the plan changes to or from creditable status
- Result of incorrect reporting on CMS is a late penalty for the member

CREDITABLE COVERAGE – PART D

- With part D, it means if the group health plan is as good as the standard Part D coverage.
- If creditable, the individual does not need Part D
- If not creditable, and individuals do not purchase Part D, there is a 1% penalty for every month the person delayed enrolling.

PART D LATE ENROLLMENT

The cost depends on how long the person was without creditable prescription drug coverage. Currently, the late enrollment penalty is calculated by multiplying 1% of the “national base beneficiary premium” (\$33.13 in 2015) times the number of full, uncovered months eligible but not enrolled in a Medicare drug (after 63 days). The final amount is added to the monthly premium. The penalty is for as long as you have a Medicare drug plan.

RESOURCES

**1-800-MEDICARE
1-800-633-4227
TTY 1-877-486-2048
www.medicare.gov**

Social Security

To get a replacement Medicare card; change address or name; get information about Part A and/or Part B eligibility, entitlement, and enrollment; apply for Extra Help with Medicare prescription drug costs; ask questions about premiums; and report a death.

**1-800-772-1213
TTY 1-800-325-0778
www.socialsecurity.gov**

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