



## Compliance Corner Webinar:

### Understanding Medicare Interactions with Group Insurance

September 21, 2017

**Q: Can one enroll into cobra once they reach age 65? I was told an employee age 65 plus gets laid off they don't qualify for cobra.**

A: Per *Geissal v Moore* in 1994, Medicare eligible persons who experience a QE (Qualifying Event) must be offered COBRA. Conversely, if the individual becomes entitled to Medicare while enrolled in COBRA, the COBRA terminates.

**Q: If they are just now reaching 20, they won't have the average of 20 this year. Will they be subject after 20 weeks? Or will they be subject after 20 weeks into the new calendar year?**

A: An employer is subject to MSP once they have had 20 or more on payroll (counting everyone in all affiliated companies) working in each of the 20 weeks but not necessarily consecutive weeks, immediately on the 21<sup>st</sup> week. They remain MSP through the entire year they reach 20 and for the entire subsequent year regardless of how many employees they have in the subsequent year. We have the example in the presentation.

**Q: If Medicare is primary employees cannot waive Part B?**

A: There is NO obligation to purchase Part B. however if they don't, they will pay out of pocket as the carrier will carve it out as if it were in place.

**Q: If there are any days in 2017 that group is 20+ then 2018 MSP still applies? You must be 365 calendar days under 20 for Medicare to be primary? 20 wks doesn't apply for Medicare to be primary again?**

A: Correct. An employer is subject to MSP once they have had 20 or more on payroll (counting everyone in all affiliated companies) working in each of the 20 weeks but not necessarily consecutive weeks, immediately on the 21<sup>st</sup> week. They remain MSP through the entire year they reach 20 and for the entire subsequent year regardless of how many employees they have in the subsequent year. We have the example in the presentation. Also see the slides re "current employment status".

**Q: California many carriers in CA state they will pay as primary regardless of employer size. That said, employers are advising their EEs they don't have to get part B even though the ER has less than 20 employees. Are there any implications of this policy?**

A: Yes. If they move to another state or if CA changes the policy

**Q: I thought the law changed with Cobra being Creditable Coverage regarding eligibility for Medicare and no penalty to sign up for Medicare is changing as of 1/1/18? Wasn't NAHU working on this legislation?**

A: Still not law; you may be thinking of the change effective 2019 that will allow Medicare Advantage Plan members to dis-enroll from their MA plan and switch to a different MA plan.



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**Q:** many of the carriers are paying claims as primary even if the insured is on a group is 19 employees or under. Do many other agents experience this as well? Any problems with claim payment? I have been going to my carriers for their explanation of how they will handle the claims and they are stating that the carrier will pay the claims

**A:** Carriers can change their policy. You may get one answer today and another in six months.

**Q:** Where can you find the list of states?

**A:** I assume the person here means a list of how each state handles. There is no such list. Check with the carrier in the state where the plan is filed. You could find that carriers within a state may approach this differently.

**Q:** In groups with less than 20 employees, can the employer encourage employees with Medicare to waive the group health plan and offer incentive to do so.

**A:** Yes but we advise that is a slippery slope and age discrimination. And it's not less than 20, it's for employers not subject to MSP. Remember, too, that the employer may become subject to MSP midyear. The employer would have to closely track this and stop the practice upon becoming subject to MSP.

**Q:** What do you mean Part B can't be purchased outside SEP? If employer plan changes where part B isn't paid by carrier - why couldn't EE enroll in Part B at that time?

**A:** Because it's anti-selection against Medicare to only purchase when it is needed. Like buying house insurance when the house is burning. Part B is only available in the 7 months surrounding the 65th birthday month or upon a Special enrollment period (SEPs). Check the Medicare handbook for a list of SEPs. If you don't sign up for Part B when you're first eligible and you aren't eligible for a SEP, you may have to pay a late enrollment penalty of 10% each full 12 month period.

**Q:** I am writing a Medicare Supplement on an individual who is turning 65 in Oct. He will go on Medicare A and B. He is on a group right now and the group is under a Section 125. What does he have to tell the employer and group? He should not have any problem because his has a qualified event i.e. turning 65, right?

**A:** This is only a QE to stop deductions if it's included in the Section 125 document. If the employee has a spouse covered, they may need to consider the spouse's needs as well.

**Q:** what are the qualifying events which allow for changes to deductions under a sect. 125 plan?

**A:** <http://www.taxalmanac.org/index.php/Reg. 1.125-4>

**Q:** HSA--when does Part A NOT go retroactive? We've had clients go back to original effective date and it disqualifies all those contributions.

**A:** If you first sign up for Part A and/or Part B during the 7 month period that begins 3 months before the month the



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person turns 65, coverage starts the first day of the birthday month. If you sign up during the general enrollment period you can sign up between January 1 and March 31 with coverage beginning on July 1 of that year.

Q: If the group is less than 20 employees and the employee doesn't enroll on Medicare b because they are actively at work are they required to enroll on Medicare b? Some carriers mandate the carve out i.e. Aetna anthem guardian UHC Kaiser but CareFirst BCBS does not- So please explain are you saying all groups under 20 mandate their employees enroll on Medicare b due to the carve out ?

A: No one may mandate that persons sign up for Parts A or B. we are saying that if the member does not sign up for Part B, the carrier can carve it out

Q: Must Part D notice be sent out to retirees who are enrolled on MAPD? Or only to actives etc.?

A: All persons eligible for Medicare due to age or disability. Don't forget those on cobra or state continuation

Q: Just FYI we have had a few niche small employers use it. It was helpful for the few groups we had where everyone had off-exchange coverage. But maybe 2 clients.

A: I assume you're referring to the QSEHRA.

Q: For employers with 19 or less, are they legally able to FORCE OFF age 65+ people off the health plan and require they take Medicare? We feel this is illegal but one of our groups legal counsel states "it is perfectly legal" for groups 19 and under. Do either you have an opinion?

A: Yes but we don't recommend it. It's not 19 or less. Please state it as employers not subject to MSP.

Q: Can you please clarify the QSE HRA again; specifically the section where the Employer Pays 100% of costs and MEC plans.

A: QSEHRAs must be 100% funded by the employer and the employer must have proof that the employee has MEC in place. We have an archived webinar on the QSEHRA which you may wish to review.

Q: Can a person apply for Medicare Online, and if not when is this expected to change?

A: Yes you can:

[https://www.medicareinfo.org/findplans/index.php?Creative=12379205877&Keyword=31073554176&MatchType=e&Placeholder=medicare+online+application-c-&Referrer=BING&Subid=EX-medicare+online+application&Subreferrer=Senior-Search-General-HT&msclkid=dfba7da6991614fe62b3246c5c7b1a58&utm\\_campaign=Senior-Search-General-HT-EX-medicare+online+application&utm\\_medium=CPC&utm\\_source=BING&utm\\_term=12379205877-31073554176](https://www.medicareinfo.org/findplans/index.php?Creative=12379205877&Keyword=31073554176&MatchType=e&Placeholder=medicare+online+application-c-&Referrer=BING&Subid=EX-medicare+online+application&Subreferrer=Senior-Search-General-HT&msclkid=dfba7da6991614fe62b3246c5c7b1a58&utm_campaign=Senior-Search-General-HT-EX-medicare+online+application&utm_medium=CPC&utm_source=BING&utm_term=12379205877-31073554176)

Applying online is much faster than going into the Social Security Administration office. They may still require proof of age or other documents but it can be relatively painless.



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**Q:** I thought that Medicare Part A was automatic for anyone who had paid into it but that Part B was not. Please clarify

**A:** Per the Medicare handbook, Part A is ONLY automatic to those who are receiving SS benefits. A person who has not taken social security benefits may sign up for Medicare Part A or A and B when they turn 65.

**Q:** Misinformation given - One does NOT have to be taking Social Security in order to enroll in Medicare Part A.

**A:** We agree. We said that Part A was ONLY automatic to those who are collecting SS.

**Q:** What is the deadline for the CMS online disclosure statement for employers?

**A:** **CMS Disclosure Requirements**

At a minimum, the CMS creditable coverage disclosure notice must be provided at the following times:

- Within 60 days after the beginning date of the plan year for which the entity is providing the form;
- Within 30 days after the termination of the prescription drug plan; and
- Within 30 days after any change in the creditable coverage status of the prescription drug plan.

For plan sponsors with calendar year plans, the deadline to comply with the annual disclosure requirement is March 1, 2017.

### Online Disclosure Method

Plan sponsors are required to use the online disclosure form on the CMS Creditable Coverage [webpage](#). This is the sole method for compliance with the disclosure requirement, unless the entity does not have Internet access.

**Q:** Did I miss the part on can an employer pay for a Med Supp?

**A:** Only permitted for an employer not subject to MSP. Also permitted for employers who have a QSEHRA (Qualified Small Employer HRA)

**Q:** Why would a carrier decide to not force an employee to purchase Part B, like Oxford, when Medicare would be primary?

**A:** A carrier cannot mandate the coverage. They carve it out.

**Q:** Does an employee who has an employer plan have to notify Medicare they are not enrolling in Medicare?

**A:** No. They would just not sign up if they are corresponded with by CMS

**Q:** So on QSE HRA, employer cannot pay part of premium, correct, must be 100%?

**A:** Correct. No premium. Employers fully fund. Salary deduction is not permitted.

**Q:** can you please confirm if the creditable coverage to be same as Medicare coverage?



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A: Creditable coverage in the context of Medicare Part D means the Rx coverage is as good as the minimum coverage.

Q: I would like to take a deeper dive into Medicare in general. Can you recommend a course or manual other than the Medicare handbook?

A: The MSP manuals: <https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Coordination-of-Benefits-and-Recovery-Overview/Medicare-Secondary-Payer/Medicare-Secondary-Payer.html>. Also, NAHU has a Medicare Certification Course that is very comprehensive.

Q: so if someone delays social security till age 70, does that mean they do not have Medicare part a?

A: A person can delay taking their social security benefit and still sign up for Medicare when they reach 65.

In March 2011, a Federal District Court Judge dismissed a lawsuit that sought to allow people receiving Social Security benefits to opt out of Medicare Part A. The lawsuit, known as Hall v. Sebelius, was originally filed October 9, 2008 and argued that the two government programs are voluntary and that the application for each of these programs is not dependent on the application for the other.

Furthermore, there is a little-known rule in the Social Security Administration's "Program Operations Manual System," an SSA handbook designed for internal use by SSA employees in processing claims that says that anyone who opts out of Medicare Part A also forfeits all past and future Social Security retirement benefits. This means that seniors would stop receiving their Social Security check and would be required to repay any benefits received prior to dis-enrolling from Part A. Presumably this would mean they were enrolled in Medicare Part A and then disenrolled.

Q: I have a client with 100+ employees. Two employees are over 65 and they want to go on Medicare and not continue on the group plan. Is this permissible? They prefer Medicare to the group plan.

A: Employees 65 and over and eligible for Medicare may waive off the employer plan and go fully onto Medicare. The key here is that the employer cannot offer an incentive for the employees to waive the employer plan for Medicare.

Q: If an employee on an over 20 employer dis-enrolls from the group plan and signs up for part b and a supplement and then decides they want to go back on the group plan at open enrollment, my understanding is that they no longer qualify for a non-underwritten supplement and could hurt themselves if they are uninsurable.

A: An employer subject to MSP, 20 or more. An active at work employee may reenroll at any employer open enrollment period. Retired individuals are the ones who cannot re enroll.

Q: Can an employer with less than 20 employees pay for their Medicare Part B premiums?

A: Yes but we discourage this practice. Remember, if this is done, it should be a formal part of the employer's plan offering. It shouldn't be done on an as hoc selective basis.

Q: Can an employee of an employer with less than 20 employees elect to not enroll in Part B in favor of employer



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coverage and still qualify for an SEP when they lose their employer coverage?

A: Anyone has the free will to not enroll in Part B but the carrier will carve out and NOT pay Part B claims.

An SEP applies within 8 months of losing employer group coverage. See the Medicare Handbook.

Q: Is it very clear that a Medicare Primary group (less than 20) can reimburse an employee for Part B. What about Med Supp?

A: The reimbursement of premiums must be integrated with the employer's group health plan. There are some carriers that will not accept an employer check.

Q: Do you need a QSE HRA to pay for a Medicare supplement, Part B and Part D in lieu of group plan?

A: No, but it must be integrated with the employer's group health plan.

Q: Does CMS send the report about MSP status to employers every year?

A: Yes they do.

Q: Is there any issue with an owner deciding to drop his group coverage and take Medicare with a supplement instead while still working?

A: No one is forced to enroll onto an employer group plan

Q: When is the employer responsible to reporting to Medicare about their total employee count?

A: When they are requested the information from CMS.

Q: So a group that goes from over 20 to under 20 means that any EE's 65 or over have to apply for Part A & B?

A: Yes, once the employer is no longer subject to MSP, the employee who is not enrolled in Part B will generally have to pay those claims out of pocket.

Q: Continuation of less than 20 employee question - I met to state they defer enrollment in Part A and Part B in favor of employer coverage and still qualify for an SEP when they lose their employer coverage?

A: If the employer is not subject to MSP and the employer defers enrolling in Part B, the carrier generally will not pay for Part B claims so that the covered individual will have to pay out of pocket. If the employee is working for an employer subject to MSP, there is an SEP when the coverage terminates so that the individual can sign up for Medicare.

Q: may people decline part b Medicare while they continue to work and they also do not take social security until full





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retirement age. Does this mean they have no Medicare Part A.? I think most people think they automatically have Medicare A and then sign up for B when they quit working. Please clarify.

A: Anyone can decline Medicare Part B but if they work for an employer who is not subject to MSP, the member will be paying Part B claims out of pocket as the carrier generally does not pay. Part A is ONLY automatic when persons are taking SS benefits or have been deemed Medicare disabled. This is confirmed in the Medicare handbook. However, a carrier may not carve out Medicare Part A benefits. A person has to affirmatively sign up for Medicare Part A if they are not signing up for Social Security benefits.

Q: As a follow up I am often asked why I have to purchase part B and not be entitled to a discount from my medical premiums.

A: The ACA stopped any reduced rate when Medicare is primary.

Q: Is the HR person in a company responsible for informing an employee and employee's options Group vs. Medicare enrollment?

A: Not legally but certainly ethically. The HR person or the broker. The employer may want to sponsor a "lunch and learn" for employees interested in Medicare and retirement. It may be possible to get someone from the local social security office speak or get a broker specializing in the retiree/aged market to speak.

Q: Is Medicare eligibility considered a qualifying event?

A: Qualifying event for what? To drop the employer plan premium deduction? Yes, if it's stated in the employer Section 125 document.

Q: Not clear: can an employer pay retirees supplemental and part D policies?

A: Yes.

Q: COBRA does not terminate....it continues - creating a HUGE Part B enrollment issue.

A: COBRA coverage is not deemed to be creditable coverage for Medicare Part B.

Q: Can an employer of any size offer a plan that covers prescription only coverage to Medicare eligible individuals? (For everyone)

A: Yes, but must be offered to everyone.

Q: Why is paying an employee's Med Supp premium in non 20 or more employee groups discouraged?

A: It's not discouraged. It is prohibited by MSP rules.

We discourage non MSP employers from paying due to age discrimination.



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Q: So, if on COBRA and then eligible for Medicare then COBRA ends correct?

A: Correct.

Q: Please address the scenario in which an employer with less than 20 subject to Medicare Secondary Payer, has a 65+ employee who is not eligible for Medicare because they do not have enough quarters worked or they have a green card. Does the carrier have to step up & pay primary?

A: MSP ONLY applies if the employer has 20 or more for 20 more weeks in the preceding or current calendar year. If the member can prove to the carrier that s/he is no eligible for Medicare, the carrier will pay primary.

Q: Medicare eligibility is a QE to drop group coverage but does have an effect on dependents

A: Anyone can drop their health plan coverage. The issue is that under Section 125, the pre- tax deductions cannot cease. When there is a QE, it would apply to all those who are covered.

Q: what about EE's on Retiree State plans? Are there different rules regarding part B?

A: No.

Q: IF they take COBRA - but come off before the 8 months - does this still apply for Part D?

A: For Medicare Part D, as long as there is no more than a 63 day gap from the last coverage.

Q: They have an enrollment period for Part D still - is this correct?

A: Yes, per the Medicare Handbook 2018:

*You can join, switch, or drop during Open Enrollment, between October 15–December 7 each year. Your changes will take effect on January 1 of the following year, as long as the plan gets your request during Open Enrollment.*

Q: Did you say it is illegal to pay for a Medicare supplement if over 20 employees?

A: Not over 20. We said that if the employer is subject to MSP, or 20 or more for 20 more weeks in the preceding or current calendar year, the CMS prohibits it. An employer subject to MSP cannot pay for Medicare supplement as that would be an incentive for the employee to enroll in Medicare.

Q: Why is COBRA NOT creditable coverage if the employer plan it is based upon is creditable?

A: Do not confuse creditable for Part D with creditable for Part B. that is a CMS rules.

Q: When a employee, who is on a family group plan, turns 65 and elects Medicare in their IEP is this a qualifying event





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for the family to elect COBRA since they are no longer eligible for the group health plan. Elect COBRA for 36 months?

A: No, we have confirmed this with the IRS many, many times. Voluntarily dropping off the employer plan is NOT a COBRA event for the family.

Q: But the 8 months applies to Part D? Sorry - I have a client who must finish his particular medication before going on Medicare because of the outrageous cost under Medicare....so he just needs the 2 additional months of his COBRA - but would be off before the 8 months.

A: The 8 month special enrollment applies to Part B, not D. For Part D, as long as the individual had Part D creditable coverage and lost it, they can purchase an individual Part D plan.

Q: What should an employee do if they are enrolled in a HDHP that is not Part D creditable? If they sign up for a Part D plan, don't they lose the ability to contribute to an HSA?

A: If they are enrolled in ANY Medicare, they can no longer contribute to an HSA account.

Q: If an employer moves the under 20 employee group to a HDHP making the Rx not creditable, why can't the employer pay the Part D premium for their active employees so they meet the creditable coverage requirement?

A: It is not true that all HDHPs are not creditable to Part D. Paying Medicare premium is a CMS rule. Only an employer who is subject to MSP cannot pay.

Q: Is there a time period where an employee has to be employed by an employer over 20 to be able to generate a qualifying event for Part B? For example, if someone over 65, who had not previously elected Part B and is outside their 8 month window, goes to work for an employer with more than 20 employees, do they have to be on the employer plan for any particular length of time before they would be able to sign up for Part B if they were laid off or retired?

A: It's 20 or more, not over 20; and 65 and over, not over 65. There is no need for an employee working for an employer subject to MSP (20 or more) to purchase Part B.

Q: Can an employer of any size establish a Group Medicare Supplement Plan or a Group MAPD Plan.

A: Are you asking about a retiree only plan? It would be a question of finding an insurer.

Q: How can we access the state specific list illustrating which states carve out Part B claims?

A: There is no list. You have to go to the individual state departments of insurance or look in the state group plan document.

Q: What if the "agent/broker" discusses with an employee about looking at Medicare for plans that might have better coverage for an employer plan not subject to MSP?



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A: It is ok if they discuss options. The prohibition is for the employer to encourage or incent the employee to drop the employer plan. If you're asking about an employer who is not subject to MSP, there is no prohibition.