



# Medicare Secondary Payer & Employer Coverage

**Presented by**  
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September 2017

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# TODAY'S PRESENTERS

## **Joan Fusco HIA,PAHM,RHU, PPACA Certified**

**Chief Compliance Officer**

**Savoy Associates**

Joan joined Savoy Associates in April 2003 and has over 30 years experience in the insurance field primarily focused on research and training and provides up to 100 Continuing Education courses every year. She has been a Continuing Education provider and instructor for 19 years and instructor for the annual NJAHU Conference for the past 10 years. Previous to her employment at Savoy Associates, Joan was the Compliance and Quality Manager for Horizon BCBSNJ and founded, managed and instructed their Continuing Education school. Joan is the chair of the NJ Commissioner's Life and Health Advisory Board, a former member of NAHU's Legislative Council, and Co-Chair for the NAHU Compliance Corner Working Group. She is licensed in NY, NJ, PA, DE and MD.

## **Mike Smith**

**President**

**The Brokerage, Inc.**

Mike Smith entered the insurance business in 1993 as a marketing and agent service representative at The Brokerage Inc., an insurance marketing organization specializing in life, health, financial, senior insurance products and marketing services and licensed in all 50 states. Mike currently serves as The Brokerage's president and is responsible for marketing strategy, operations, sales support, web site development, public relations, and business development. Mike is an active member of NAHU and served as the president of the Ft. Worth chapter in 1997. He received his Bachelor's Degree in Business Administration from The University of North Texas, and has earned the Long Term Care Professional and Small Group Specialist designations.



# AGENDA

- Medicare secondary payer rules
- Medicare due to disability
- Medicare Part B carveout
- Working employees dropping coverage
- Health savings accounts
- What employers can pay for
- Medicare Part D employer obligations
- QSEHRA



# WORKING INDIVIDUALS 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. Self-employed individuals do not count. Defining self-employed may require the assistance of the employer's CPA.

Employees in all affiliated companies (IRC 414 (b), (c), (m,) or (o) are included.

*Note, each employee counts as one. NO fractions.*

At the point the employer meets this criteria, claims for those with "current employment status" who are Medicare eligible due to AGE and covered under the group health plan must be paid primary by the group health plan.

In order for this to be done correctly from the start it is vital that

1. the employer inform the insurance carrier of the correct MSP status;
2. the employer inform the employees and;
3. the employee and spouse (if applicable) tell their providers.

Regardless of how the employee count changes, the group plan remains primary for the entire subsequent year.

Current employment status is defined here <https://www.law.cornell.edu/cfr/text/42/411.104>. More later.



# EXAMPLE

Employer has 20 employees for the 20th week on August 1, 2016.

At that point the health plan is primary for

- anyone eligible for Medicare due to age;
- with current employment status and
- covered under the health plan

The health plan remains primary through December 31, 2017 regardless of how many employees there are in 2017

The spouse who is Medicare eligible due to age is covered the same as the employee

When the employee eligible for Medicare due to age has a COBRA event and elects COBRA or state continuation, Medicare is always primary, regardless of group size. Sign up for B !

EXPERT TIP: Be sure to obtain what the carrier has been told about MSP status whenever obtaining a BOR

# EXAMPLES OF “CURRENT EMPLOYMENT STATUS”

## DO NOT ASSUME !

- Is receiving disability benefits from an employer for up to 6 months
- Retains employment rights in the industry and has not had his employment terminated. Examples are:
  1. Furloughed, temporarily laid off, or who are on sick leave;
  2. Teachers and seasonal workers who normally do not work throughout the year; and
  3. Persons who have health coverage that extends beyond or between active employment periods; for example, based on an hours bank arrangement. (Active union members often have hours bank coverage.)
- Special rules for religious order and self employed  
<https://www.law.cornell.edu/cfr/text/42/411.104>

# EMPLOYER MSP STATUS CHANGES

Once the employer reduces staff to less than 20 for at least one full calendar year, they are no longer subject to MSP and Medicare becomes the primary payer.

Example:

- At least 20 employees in 2016. Group remains primary through Dec 31, 2017.
  - If in 2017, there were less than 20, then as of Jan 1, 2018 Medicare becomes primary.
  - Employers must tell the carrier(s)
  - Employees eligible for Medicare due to age should enroll in Part B immediately (this falls under Special Enrollment).
  - Employees must inform providers
- Status does NOT change at renewal. The TEFRA/MSP and COBRA questions on carrier re-certifications is informational for the employer only.
- It's not more than 20, it's 20 or more

# WHEN EMPLOYMENT ENDS

- COBRA or state continuation is an option.
- Medicare is primary for those without “current employment status”
- The 8 month Special Enrollment Period to sign up for Part B runs whether or not COBRA is elected. See page 23 of the Medicare Handbook  
<https://www.medicare.gov/pubs/pdf/10050-Medicare-and-You.pdf>
- Electing COBRA and assuming ability to enroll in Part B at month 18 is a costly mistake
- Cannot wait until COBRA ends to enroll in Part B and/or D. COBRA is NOT creditable coverage. If the individual waits, they will be unable to sign up for B immediately.
- Without Medicare in place, the member will pay Part B claims out of pocket. If they don't enroll timely they will have to wait until the next General Enrollment period (Jan-March for a JULY 1 effective date)
- Signing up for Part B triggers the ONE time six (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

- Medicare is primary for insureds or covered dependents when insured by a employer with less than 100 total employees on average in the preceding calendar year
- It's best to have Part B
- When 100+, the group plan is primary for working individuals or their covered dependents
- Regardless of group size someone 65 and over who is Medicare disabled is covered as Medicare primary
- Regardless of group size, when disability is due to ESRD, the group plan is primary for the first 30 months
- See CMS' "Who Pays First" publication
- <https://www.medicare.gov/Pubs/pdf/02179-Medicare-Coordination-Benefits-Payer.pdf>

# MEDICARE PART B CARVE OUT

- Even if the carrier system incorrectly pays Part B claims for those without it, we should encourage the purchase of Part B in non MSP groups
  - The carrier can self correct at any time
  - If the employer changes to a carrier operating correctly, who will remember to tell the individual to purchase Part B
  - Individuals cannot purchase Part B outside the SEP

\*state rules apply

# WORKING EMPLOYEES DROPPING COVERAGE

- When there is a Section 125, pre tax arrangement in place, the pre-tax deductions cannot be terminated without a Qualifying Event
- Voluntarily dropping coverage does not create a COBRA event for the family. I have confirmed this several times with the IRS. The DOL has been known to give incorrect answers
- The carrier allowing it does not make it an event per the IRS



# MEDICARE RELATED HSA INFO

- Those enrolled in Medicare may no longer contribute to an HSA (health savings account)
- OK to be eligible
  - *Medicare part A is not automatic at age 65*
  - *IRS Publication 969*
- Domestic partners / civil unions partners not eligible “spouses” for Medicare

Individuals who delay applying for free Medicare Part A are covered retroactively to the month they attained age 65 or for six months, whichever is less. The letter explains that the Code sets a zero-contribution limit for months of Medicare coverage and that rule has no exceptions, so months of retroactive Medicare must also reduce HSA contributions.

An HSA account holder who over contributes because of retroactive Medicare coverage may avoid the 6% excise tax under [Code § 4973](#) by withdrawing the excess contributions by the federal tax return filing deadline (including extensions) for the contribution year. Timely withdrawals of excess contributions are not subject to the 20% additional tax for non-medical distributions. That tax also does not apply to distributions made after an HSA account holder attains age 65, so even if the excess is not timely withdrawn, it can be withdrawn later without incurring the additional tax. In either case, however, the distributions must be included in income for federal tax purposes unless they were timely withdrawn and previously treated as taxable income.

Available at <https://www.irs.gov/pub/irs-wd/16-0082.pdf>

# WHAT CAN EMPLOYERS PAY FOR

- Section 411.103 Prohibition against financial and other incentives
- An employer or other entity (e.g. insurer) is prohibited from offering Medicare beneficiaries financial or other benefits as incentives not to enroll in, or to terminate enrollment in a group health plan that is primary to Medicare
- Subject to a civil money penalty of up to \$5,000 for each violation

\*this applies to employers subject to MSP

# MEDICARE PART D EMPLOYER OBLIGATIONS

- A mandatory 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 Mini COBRA continuants, or retirees (if covered)
- Notice must be sent by October 15 (before open enrollment)
- Also Mandatory notice to CMS online
- Result of incorrect reporting on CMS is a late penalty for the member

# THE QUALIFIED SMALL EMPLOYER HRA- WE WILL REFER TO AS QSE HRA

- The 21<sup>st</sup> Century Cures Act was signed by President Obama on December 13, 2016.
- Within the Act is this new tax advantaged plan that eliminates the prohibition of standalone HRAs as stated in Notice 2013-54 and allows small employers (non ALEs) to pay or reimburse individual premiums, Medicare Part B premium (subject to MSP rules), LTC premium and qualified medical expenses under 213(d) for certain eligible employees.
- The QSE HRA was effective as of January 1, 2017.
- We can expect regulations soon and encourage employers to wait until all the implementation guidance has been published before executing these arrangements.

# QSE HRA REQUIREMENTS

- Only available to non ALEs. Counting includes ALL employees in all affiliated companies (IRC 414)
- The small employer may NOT be offering a group health plan
- Employer must fund 100%. NO salary reduction is permitted
- The employee must have at least MEC coverage and the employer must have proof of such coverage. Otherwise the benefit is taxable and the employee is subject to the Individual mandate penalty.
- This specifically removes the prohibition of standalone HRAs per Notice 2013-54 and the \$100/day associated penalty for QSE HRAs ONLY
- The employer can pay or reimburse the individual premium of the employee (not for a spouse's group health plan !), Medicare Part B premium (subject to MSP (Medicare Secondary Payer) rules) and any qualified medical expense under 213(d) e.g. dental or vision.

# FUNDING & AFFORDABILITY

- \$4,950 for employee only and up to \$10,050 if both the employee and family are eligible for reimbursement
- Amounts are pro-rated for new hires not employed a full 12 months
- If the HRA funds make premium affordable, the individual is not entitled to a marketplace subsidy. Funding v household income v 9.56% of income determines affordability

# RESOURCES

**Medicare Handbook**  
**Medicare Who Pays First**  
**1-800-MEDICARE**  
**1-800-633-4227**  
**TTY 1-877-486-2048**  
**[medicare.gov](http://medicare.gov)**

**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**  
**[socialsecurity.gov](http://socialsecurity.gov)**





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# THANK YOU FOR ATTENDING



## New Medicare Infographic!

- Use this with your clients to explain Medicare Parts A, B, C and D.
- Available for download at:  
<http://nahu.org/resources/promote-yourself/infographics>