

Benefit Brief



SUBJECT: Medicare Secondary Payer: How to prepare Employees when they approach age 65

DATE: June 28, 2007

This Benefit Brief discusses steps the employer should take to ensure coverage for their employees who are or become covered by Medicare.

DETERMINING WHEN MEDICARE IS PRIMARY

In most cases, Medicare will be secondary to any group insurance plan in which an employee or spouse is enrolled. However, Medicare will be primary in the following situations:

Medicare Eligibility Based on Employee's Age If the group has had less than twenty (20) **employees** for every work day in twenty (20) weeks of the current or the preceding calendar year, Medicare will be the primary payer and the group health plan pays secondary.

Medicare Eligibility Based on Disability Medicare is the primary payer for disabled eligible employees, excluding those with End Stage Renal Disease (ESRD), under 65 if the group had less than 100 full or part-time employees on at least 50% of its regular business days during the previous calendar year.

Medicare Eligibility Due to ESRD Medicare is the primary payer for individuals with End Stage Renal Disease only after the first thirty months of treatment. All groups must pay claims as primary payer for the first thirty (30) months. The only exception to this is if the individual was already receiving Medicare due to age or disability. In this instance, Medicare would remain the primary payer.

Please see the attached chart for more information.

ACTIONS REQUIRED

Groups for which Medicare is the primary payer (see discussion above to determine when Medicare is primary) should include in their cafeteria plan a provision that allows participants to make a mid-year election change when they become entitled to Medicare. This would allow employees to cancel coverage under the group health plan or to change their health Flexible Spending Account elections if they become entitled to Medicare.

Employers should also review their plan documents to determine how the plan coordinates benefits with Medicare. Many plans will pay secondary to Medicare even if the employee has not signed up for Parts B and D of Medicare. Employers should educate their employees about when to apply for Medicare so that they do not miss the Medicare enrollment date, which will result in a higher premium.

Groups for which Medicare is the secondary payer are required to provide current employees and their spouses who are age 65 or older with the same benefits, under the same conditions, that are provided to employees and spouses who are under age 65. Employers may not discourage employees from enrolling in their group health plans, or offer financial or other incentives for individuals entitled to Medicare not to enroll in their group health plans. As of the date of this Benefit Brief, employers are permitted to offer different benefits for retirees over age 65 than they provide to those under age 65.

Employers should review their plan documents to make sure that their group health plans comply with the Medicare Secondary Payer requirements. Agreements with insurers must adequately address conditions for obtaining reimbursement from the insurer and the employer's liability to reimburse Medicare for conditional payments.

BACKGROUND ON MEDICARE

There are three reasons that a plan participant may be eligible for Medicare while enrolled in a group health plan: age, disability, and End Stage Renal Disease (ESRD). Medicare has four parts: Part A (hospitalization coverage), Part B (professional provider coverage), Part C-Medicare Advantage (optional coverage to original Medicare coverage including HMO's and managed care plans), and Part D (prescription coverage).

A plan participant will be eligible for free Medicare Part A if they have worked in a job covered by Social Security for approximately ten (10) years or are eligible under their spouse's earnings. If not eligible for free coverage, the participant can purchase Medicare Part A as long as they are age 65, have been a U.S. resident for five (5) years and are entitled to Medicare Part B. Eligibility begins the day before the person's 65th birthday. If the plan participant is already receiving Social Security benefits, enrollment in Medicare will be automatic. If the participant is not receiving Social Security benefits (because they are currently working), they must apply for Medicare and should do so three (3) months before they turn 65. If filing before their birthday or within six (6) months after their birthday, Medicare will become effective on the first of the month in which they turn age 65.

If the plan participant is under 65, they can be eligible for Medicare if they are entitled to or have been receiving disability benefits from Social Security for twenty-four (24) months. Medicare benefits will begin on the 25th month of Social Security entitlement.

End Stage Renal Disease (ESRD) entitles a plan participant to Medicare when they are on kidney dialysis or need a kidney transplant. The person must apply for enrollment in Medicare because there is no automatic enrollment for ESRD. They will become eligible for Medicare the first day of the third month after beginning dialysis or sooner if they receive a kidney transplant or do self-dialysis. Medicare terminates twelve (12) months after an individual stops dialysis or thirty-six (36) months after receiving a transplant, unless they resume dialysis.

If you have questions or would like more specific advice or information, please contact Danielle Omans at The Benecon Group, Inc. at domans@benecon.com or the number shown below.

This Benefit Brief is provided for informational purposes only and does not constitute legal advice. The Benefit Brief contains only a summary of the applicable legal provisions and does not purport to cover every aspect of any particular law, regulation or requirement. Depending on the specific facts of any situation, there may be additional or different requirements. Please use this Benefit Brief as a guide and not as a definitive description of your compliance obligations.

**MEDICARE
WHO PAYS FIRST**

<i>If you ...</i>	<i>Condition</i>	<i>Pays First</i>	<i>Pays Second</i>
Are age 65 or older and covered by a group health plan because you are working or are covered by a group health plan of a working spouse of any age	The employer has less than 20 employees	Medicare	Group health plan
	The employer has 20 or more employees	Group health plan	Medicare
Have an employer group health plan after you retire and are age 65 or older	Entitled to Medicare	Medicare	Retiree coverage
Are disabled and covered by a large group health plan through your work, or through a family member who is working	The employer has less than 100 employees	Medicare	Group health plan
	The employer has 100 or more employees	Large group health plan	Medicare
Have End-Stage Renal Disease (permanent kidney failure) and group health plan coverage (including a retirement plan)	First 30 months of eligibility or entitlement to Medicare	Group health plan	Medicare
	After 30 months	Medicare	Group health plan
Are covered under workers' compensation because of a job-related illness or injury	Entitled to Medicare	Workers' compensation for workers' compensation claim related services	Usually doesn't apply. However, Medicare may make a conditional payment.
Have black lung disease and are covered under the Federal Black Lung Program	Entitled to Medicare and Federal Black Lung Program	Federal Black Lung Program, for black lung related services	Medicare
Are a Veteran and have Veterans' benefits	Entitled to Medicare and Veterans' benefits	Medicare pays for Medicare-covered services. Veterans' Affairs pays for VA authorized services.	Usually doesn't apply.
Are covered under TRICARE	Entitled to Medicare and TRICARE	Medicare pays for Medicare-covered services. TRICARE pays for services from a military hospital or any other federal provider.	TRICARE may pay second.
Have been in an accident where no-fault or liability insurance is involved	Entitled to Medicare	No-fault or liability insurance, for accident related services	Medicare
Are age 65 or over OR disabled and covered by Medicare and COBRA coverage	Entitled to Medicare	Medicare	Cobra
Have End-Stage Renal Disease (permanent kidney failure) and COBRA coverage	First 30 months of eligibility or entitlement to Medicare	Cobra	Medicare
	After 30 months	Medicare	Cobra

Taken from U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services, CMS Pub. No. 02179