NEWFRONT

Medicare for Employers

2025 Edition

Audio

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Guide Topics

How do Employers Interact with Medicare?

Understand the Points of Coordination, Avoid the Rest

- Think of Medicare issues in a similar way that employers interact with personal tax issues related to employee benefits
- Stick to a high-level overview, avoid advising on specific situations where possible, advise consultation with expert advisers where the employee needs more information
- As with tax issues, most Medicare issues are unrelated to employee benefits and should not be addressed by employers
- In those cases, it's appropriate to route employees to the Medicare & You handbook, the Contact Medicare website, SHIP Medicare Counseling and/or the Consumer Assistance Programs (CAPs)
- However, employers should be versed in the Medicare issues that related to employer-sponsored group health plans

Medicare for Employers Topics for Discussion:

1. **MSP:** How the Medicare Secondary Payer rules affect employer-sponsored group health plans
2. **COBRA:** How the COBRA rules interact with Medicare in complicated (and confusing!) ways
3. **Special Enrollment Periods:** How to enroll in Medicare after loss of active employer coverage
4. **Part D:** Avoiding late enrollment penalties by maintaining creditable coverage (employer notice required), including new IRA changes
5. **HSAs:** How and when Medicare affects HSA eligibility—including potential Part A retroactive concerns

01

Medicare Secondary Payer

Who Pays First (and More)

Employers Subject to MSP Rules

MSP Applicability Based on Employer Size and Type of Entitlement

In most cases, Medicare entitlement is based on age (65+) or disability. Different rules apply for both. (Note: Special rules apply for Medicare entitlement based on End Stage Renal Disease (ESRD))

Entitlement Based on Age (65+)

20+ Employees

Look to Employee Count in Either:

1. Current Calendar Year; or
2. Preceding Calendar Year

- Must have 20+ employees on all days in at least 20 calendar weeks
- Must have 20+ for each working day to count as a calendar week
- Count all employees (not just Medicare-eligible employees)—on a controlled group basis
- Count full-time and part-time employees

Entitlement Based on Disability

100+ Employees

Applies to a "Large Group Health Plan"

- Employer must normally employ at least 100 employees on a "typical business day" during the previous calendar year
- Means employer must have 100 or more employees on at least 50% of its regular business days in the previous calendar year
- Count all employees (not just Medicare-eligible employees), and include part-time employees—on a controlled group basis

The MSP Basics

GHP Pays Primary for Active Coverage

The basic rule of thumb for the MSP rules is that employers are prohibited from “taking into account” the Medicare entitlement of a current employee or spouse/child.

Active Coverage

Individuals Covered Based on “Current Employment Status”

The Employer-Sponsored Group Health Plan (GHP) Pays Primary

- For active employees and spouses Medicare will pay **Secondary**
- A standard coordination of benefits rule will apply whenever the employee or spouse is covered under GHP and Medicare
- MSP rules also require that the GHP provide same benefits under same conditions to age 65+ employees

COBRA or Retiree Coverage

MSP Does Not Apply

Medicare Pays Primary

- The employer’s group health plan will pay **Secondary**
- Retirees and COBRA qualified beneficiaries are not receiving coverage based on “current employment status,” so MSP rules do not apply
- In almost all situations, the plan’s coordination of benefits provision will provide that Medicare pay primary for COBRA or retiree coverage
- Plan can assume the Medicare payment rate and pay only as secondary coverage for any COBRA participant eligible for Medicare—even if not enrolled in Medicare!

Prohibited Incentives: Can't Encourage Medicare

The MSP rules are also designed to ensure that employers don't provide financial or other incentives to waive the GHP in favor of Medicare enrollment. The penalty is $11,524 (indexed) per violation.

1	**No Medicare or Medicare Supplement Reimbursement**
	● Employer cannot pay for Medicare or Medicare supplement premiums
	● Medicare and Medicare Supplement reimbursement also raises complex issues under the ACA's individual policy reimbursement prohibition
	    ● Medicare reimbursement generally permitted for employers not subject to MSP rules, under certain conditions set forth in IRS Notice 2015-17, or under an Individual Coverage HRA (ICHRA)
	    ● Medicare supplement reimbursement permitted under ACA (but not MSP)

2	**No Coverage Designed to Supplement Medicare** ● Employers cannot provide coverage to active employees that is designed to supplement Medicare coverage ● Not an issue for retiree-only plans (because MSP rules do not apply)
3	**No Special Opt-Out Credits for Age 65+ Employees** ● Any encouragement to waive the GHP in favor of Medicare, including a payment in the form of an opt-out credit, is a clear MSP violation ● However, DOL has confirmed that an opt-out credit available equally to all employees (regardless of Medicare eligibility) does not violate MSP rule

MSP Complications for Domestic Partners

Special Concerns for Non-Spouses

MSP Rules Apply to Active Employee’s Spouse

- If an active employee’s spouse is enrolled in Medicare and the employee’s group health plan, Medicare will pay secondary
- Means employee and spouse GHP coverage is treated the same under the MSP rules (same-sex and opposite-sex marriage treated identically)

MSP Rules Do Not Apply to Active Employee’s Domestic Partner (DP)

- If an employee covers a domestic partner enrolled in Medicare, the employer-sponsored GHP can pay secondary (Medicare pays primary)
- GHP will often provide that it pays secondary to Medicare for any Medicare-eligible domestic partner—**even if the domestic partner is not enrolled in Medicare!**
- In that case, employees will want to ensure that any Medicare-eligible domestic partner enroll in Medicare (not just the GHP)
  - Failure to enroll in Medicare could result in large uncovered portion of claims for DPs
  - GHP can assume Medicare paid its portion (even if the DP did not enroll in Medicare)

Section 111 MSP Reporting for GHPs

- Section 111 of the SCHIP Extension Act of 2007 created a reporting requirement to ensure proper administration of the MSP rules in group health plans (GHPs)
- Reporting requirement applies to "RREs" subject to penalties of up to $1,474 (indexed) per violation
- Information collected is used to identify and recover payments incorrectly made with Medicare as primary coverage where MSP rules require GHP be primary

Responsible Reporting Entities (RREs)

Employers are off the hook!

Fully Insured Plan:

- The insurance carrier is the RRE

Self-Insured Plan:

- The third-party administrator (TPA) is the RRE

CMS GHP User Guide has full details on the reporting process for RREs, employers generally don't have to worry about this process because not an RRE (carrier or TPA is responsible)

- Rare law applied directly to TPAs!

Limited Employer Role

Help the RRE with Compliance

- RRE will in some cases request information from the employer to confirm size for MSP status, etc.
- Employer should assist in compiling the information for the RRE to avoid any inquiry or recovery action
- Want to avoid situations where Medicare improperly pays primary for employees/spouses covered under the plan's active coverage
- These mistakes often cause CMS letters to the employer that have to be redirected to the carrier or TPA

02

COBRA

How Medicare Interacts with COBRA Rights

COBRA and Medicare

Where COBRA Can Terminate Early

COBRA Coverage Can Terminate Early Based on Medicare "Entitlement"

- Medicare "entitlement" means Medicare enrollment
- Mere Medicare eligibility (e.g., reaching age 65) is not Medicare entitlement
- Thus, mere eligibilty to enroll in Medicare cannot terminate COBRA rights

The Geissal Rule: U.S. Supreme Court Weighs In

- The only Supreme Court decision to address COBRA was Geissal v. Moore Medical Corp., 524 U.S. 74 (1998)
- The court found that Medicare entitlement (i.e., enrollment) can terminate COBRA rights **only if Medicare enrollment occurs after the COBRA election**
- In other words, Medicare enrollment prior to electing COBRA cannot cut short a qualified beneficiary's COBRA rights
- Now reflected in the COBRA regulations (Treas. Reg.§ 54.4980B-7, Q/A-3(a))

Example

- Jane, who is age 65+, terminates employment with Company A
- Jane enrolls in Medicare prior to electing COBRA coverage under A's plan
- Jane can maintain both Medicare and COBRA coverage because she enrolled in Medicare prior to making her COBRA election (although most probably wouldn't want to, she could)
- If she elected COBRA prior to enrolling in Medicare, the subsequent Medicare enrollment would cut short her COBRA rights

COBRA and Medicare

Medicare Enrollment Generally Not a Qualifying Event

COBRA Qualifying Event: Two Requirements

1. Loss of coverage
2. Caused by one of the COBRA triggering events

MSP Rules Prohibit Medicare Enrollment Triggering Loss of Coverage

- Loss of coverage caused by enrollment in Medicare technically is a COBRA qualifying event
- For most employers (generally 20+ EEs), the MSP rules prohibit employers from taking into account Medicare enrollment
- **Therefore, an employer-sponsored group health plan generally cannot provide for loss of eligibility upon Medicare enrollment**
- No COBRA qualifying event because no loss of coverage

Medicare Enrollment Also Not a Second Qualifying Event

- Certain events can extend the COBRA maximum coverage period for spouses and dependents from 18 months to 36 months
- Because Medicare enrollment almost always does not cause loss of coverage, it also cannot be the basis for a second qualifying event

COBRA and Medicare

Pre-QE Medicare Enrollment Extension

COBRA Extension Applies to Two Qualifying Events

1. Termination of Employment; or
2. Reduction in Hours

COBRA Extension Applies Only to Spouse and Children

- No extension for the employee!

Medicare Enrollment Must Occur Prior to Qualifying Event (QE)

- Medicare enrollment after QE not a second QE (see previous slide)

Extension Duration Depends on When Employee Enrolled in Medicare

COBRA maximum coverage period is the later of:

- 36 months from the date the employee enrolled in Medicare; or
- 18 months from the date of termination or reduction in hours.

Example

- Evan enrolls in Medicare July 1, 2025, and he retires December 31, 2025
- Evan elects COBRA for himself, his wife, and his kids effective January 1, 2026
- Evan's COBRA maximum coverage period is 18 months (until June 30, 2027)
- Wife and kids can continue coverage through COBRA for 30 months (until June 30, 2028)

How Medicare and COBRA Interact for Retirees

Four Medicare-Related Additions to the DOL's Updated Model COBRA Notices

1	**Medicare Will Pay Primary Concern: COBRA Coverage Can Assume Primary Medicare Payment Even if Not Enrolled in Medicare**
2	**The Eight-Month Medicare Special Enrollment Period is Not Extended by COBRA Enrollment**
3	**COBRA Coverage Does Not Qualify to Avoid Part B Late Enrollment Penalties**
4	**Early Termination of COBRA Upon Enrollment in Medicare After COBRA Election**

How Medicare and COBRA Interact for Retirees

Four Medicare-Related Additions to the DOL's Updated Model COBRA Notices

1

2

3

4

Medicare Will Pay Primary Concern: COBRA Coverage Can Assume Primary Medicare Payment <u>Even if Not Enrolled in Medicare</u>

- Retirees enrolled in COBRA are not enrolled based on "current employment status"
- That means Medicare pays primary for anyone enrolled in COBRA under MSP rules
- Plan can assume the Medicare payment rate and pay only as secondary coverage if eligible for Medicare—this is true regardless of whether the individual is actually enrolled in Medicare!
- For COBRA participants who are eligible for but not enrolled in Medicare, that leaves the amount that would have been paid by Medicare as a (potentially very large!) coverage gap for which the participant is responsible—this must be avoided by enrolling in Medicare!

Updated DOL Model COBRA Initial and Election Notices

> If you are enrolled in both COBRA continuation coverage and Medicare, Medicare will generally pay first (primary payer) and COBRA will pay second. Certain COBRA continuation coverage plans may pay as if secondary to Medicare, even if you are not enrolled in Medicare.
>
> For more information visit https://www.medicare.gov/medicare-and-you.

How Medicare and COBRA Interact for Retirees

Four Medicare-Related Additions to the DOL's Updated Model COBRA Notices

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The Eight-Month Medicare Special Enrollment Period is Not Extended by COBRA Enrollment

- Medicare-eligible employees have an eight-month Medicare special enrollment period upon retirement (or any termination of employment) that begins upon the earlier of:
  - The month after employment ends; or
  - The month after active coverage ends
- COBRA coverage (including subsidized COBRA) does not extend the start date of the eight-month special enrollment period—the period will begin to run regardless of any COBRA election
- Medicare-eligible employees who fail to enroll in Medicare during the eight-month special enrollment period will have to wait for the Part B General Enrollment Period to enroll

Updated DOL Model COBRA Initial and Election Notices

In general, if you don't enroll in Medicare Part A or B when you are first eligible because you are still employed, after the initial enrollment period for Medicare Part A or B, you have an 8-month special enrollment period[1] to sign up, beginning on the earlier of

- The month after your employment ends; or
- The month after group health plan coverage based on current employment ends.

How Medicare and COBRA Interact for Retirees

Four Medicare-Related Additions to the DOL's Updated Model COBRA Notices

1

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COBRA Coverage Does Not Qualify to Avoid Part B Late Enrollment Penalties

- Failure to enroll in Part B during the eight-month special enrollment period after losing active coverage will result in a late enrollment penalty
  - Late enrollment penalty is up to 10% for each 12-month period the individual could have had Part B, but did not enroll (penalty applies for life with every Part B premium paid)
- Retiring Medicare-eligible employees generally should not wait to enroll in Part B until after they have exhausted (or no longer want) COBRA coverage
  - Failure to enroll during special enrollment period can lead to late enrollment penalties and a coverage gap when waiting to enroll during the General Enrollment Period (Jan 1 – Mar 31 for coverage effective July 1)

Updated DOL Model COBRA Initial and Election Notices

> If you don't enroll in Medicare Part B and elect COBRA continuation coverage instead, you may have to pay a Part B late enrollment penalty and you may have a gap in coverage if you decide you want Part B later.

How Medicare and COBRA Interact for Retirees

Four Medicare-Related Additions to the DOL's Updated Model COBRA Notices

1

2

3

4

Early Termination of COBRA Upon Enrollment in Medicare After COBRA Election

- COBRA can terminate early if the qualified beneficiary enrolls in Medicare after electing COBRA
- Key points:
    1. Mere eligibility (e.g., reaching age 65) does not affect COBRA rights
    2. COBRA rules' references to Medicare "entitlement" actually mean Medicare "enrollment"
    3. Enrollment in Medicare must occur after the qualified beneficiary elected COBRA to cause early termination
- Means that a qualified beneficiary who enrolled in Medicare prior to electing COBRA will not be subject to early termination of COBRA because of the Medicare enrollment

Updated DOL Model COBRA Initial and Election Notices

If you elect COBRA continuation coverage and then enroll in Medicare Part A or B before the COBRA continuation coverage ends, the Plan may terminate your continuation coverage. However, if Medicare Part A or B is effective on or before the date of the COBRA election, COBRA coverage may not be discontinued on account of Medicare entitlement, even if you enroll in the other part of Medicare after the date of the election of COBRA coverage.

03

Medicare

Enrollment Periods

Medicare Initial Enrollment Period

Employees Who Do Not Delay Medicare Enrollment Until After Retirement

Seven-Month Initial Enrollment Period Around Age 65

Seven-month Initial Enrollment Period (IEP) to sign up for Part B upon first becoming eligible for Medicare based on age

- Begins three months before the month of reaching age 65
- Includes the month of the 65th birthday
- Ends three months after the month of reaching age 65

Coverage Effective Date if Enrolling in Initial Enrollment Period

- If enrolling during the three months before the month of turning age 65:
  - Coverage starts the first day of the month in which the individual reaches age 65
  - If the birthday is first day of the month, coverage is effective first day of the prior month
- If enrolling in the month of the 65th birthday or the three months thereafter:
  - Coverage starts the first day of the month after signing up (new rule in 2023 from the BENES Act)

Where to Direct Employees

When to Sign Up? https://www.medicare.gov/basics/get-started-with-medicare/sign-up/when-can-i-sign-up-for-medicare

When Will My Coverage Start? https://www.medicare.gov/basics/get-started-with-medicare/sign-up/when-does-medicare-coverage-start

Medicare Initial Enrollment Period

Where to Direct Employees

CMS Overview of Medicare Effective Date

https://www.medicare.gov/basics/get-started-with-medicare/sign-up/when-does-medicare-coverage-start

When your coverage starts

The date your coverage starts depends on which month you sign up during your Initial Enrollment Period. **Coverage always starts on the first of the month.**

Part B (and premium-Part A): Coverage starts based on the month you sign up:

If you sign up:	Coverage starts:
Before the month you turn 65	The month you turn 65
The month you turn 65, or during the 3 months after	The next month

Medicare Special Enrollment Period

Avoiding Penalties After Retirement

The most common approach for age 65+ employees is to delay Medicare enrollment until retirement. However, retiring employees often are not aware of the timing and loss of active coverage issues they face with respect to Medicare.

Special Enrollment Period (SEP)
Eight Months

Eight-month special enrollment period begins the earlier of:

1. The month after employment ends; or
2. The month after active coverage ends.

- COBRA coverage (including subsidized COBRA) does not extend start date of the eight-month period
- Means eight-month period begins to run regardless of COBRA election

Avoiding Medicare Penalties
Eight Months

- **COBRA does not qualify to avoid penalties after eight-month period**
- Retiring employees have eight months to sign up for Part B without a penalty
- Failure to enroll in Part B during eight-month period after employment ends means:
  - Late enrollment penalties when enrolled in Part B; and
  - Waiting until the next Medicare OE for coverage (January 1 – March 31 for coverage effective month after signing up)

Medicare Special Enrollment Period

Employer Completes Form CMS-L564

Retirees applying for Medicare Part B in a SEP after loss of active employer-sponsored coverage will complete the Form CMS-L564 to show proof of active employer coverage. Employers are directed to complete Section B of the form.

Employer Portion of Form CMS-L564
Section B

Employer is responsible for filling in the following information and returning it to the retiree:

1. Whether the individual was covered under the employer's group health plan;
2. The date such coverage began;
3. Whether such coverage has ended;
4. The date such coverage ended; and
5. The timeframe that the employee worked for the company

- A company official should sign the form with date, title, and phone number

SECTION B: To be completed by Employers

For Employer Group Health Plans ONLY:

1. Is (or was) the applicant covered under an employer group health plan? ☐ Yes ☐ No
2. If yes, give the date the applicant's coverage began. (mm/yyyy)
   /
3. Has the coverage ended? ☐ Yes ☐ No
4. If yes, give the date the coverage ended. (mm/yyyy)
   /
5. When did the employee work for your company?
   From: (mm/yyyy) / To: (mm/yyyy) / Still Employed: (mm/yyyy) /
6. If you're a large group health plan and the applicant is disabled, please list the timeframe (all months) that your group health plan was primary payer.
   From: (mm/yyyy) / To: (mm/yyyy) /

Full details: [The Medicare Form CMS-L564 for Employers]

Medicare Special Enrollment Period – Avoiding Penalties After Retirement

Where to Direct Employees: 20+ Employees (Subject to MSP)

When Should You Enroll in Part B?

https://www.medicare.gov/basics/get-started-with-medicare/sign-up/when-can-i-sign-up-for-medicare

Sign up: Within 8 months after you or your spouse stop working

- Most people don't have to pay a premium for Part A (Hospital Insurance). So, you may want to sign up for Part A when you turn 65, even if you or your spouse are still working.
- You'll pay a monthly premium for Part B (Medical Insurance), so you may want to wait to sign up for Part B.

What if I have a Health Savings Account (HSA)?

Avoid the penalty & gap in coverage
If you miss this 8-month Special Enrollment Period, you'll have to wait to sign up and go months without coverage. You might also pay a monthly penalty for as long as you have Part B. The penalty goes up the longer you wait to sign up.
How much is the Part B penalty?

What else do I need to know?

- Your 8-month Special Enrollment Period to sign up for Part B starts when you stop working, even if you choose COBRA or other coverage that's not Medicare.
- If you lose your job-based health coverage before you or your spouse stop working, you have 8 months to sign up.
- If you want Medicare coverage to start when your job-based health insurance ends, you need to sign up for Part B the month before you or your spouse plan to retire. Your coverage will start the month after Social Security (or the Railroad Retirement Board) gets your completed forms. You'll need to fill out an extra form showing you had job-based health coverage while you or your spouse were working.
- If you want more coverage, you have a limited time to get it.
  Find timeframes to get more coverage.

Medicare Enrollment – Avoiding Penalties Upon Reaching Age 65

Where to direct employees: Under 20 employees (not subject to MSP)

When should you enroll in Part B?

https://www.medicare.gov/basics/get-started-with-medicare/sign-up/when-can-i-sign-up-for-medicare

Check with the employer that provides your health insurance about signing up when you're first eligible for:

- Part A (Hospital Insurance)
- Part B (Medical Insurance)

Generally, you're first eligible to sign up for Part A and Part B starting 3 months before you turn 65 and ending 3 months after the month you turn 65.

Because the company has less than 20 employees, your job-based coverage might not pay for health services if you don't have both Part A and Part B.

What if I have a Health Savings Account (HSA)? ⓘ

What else do I need to know?

- You can sign up anytime while you or your spouse are still working for that employer, or up to 8 months after you or your spouse stop working, or the job-based coverage ends, whichever happens first.
- Your coverage will start the month after Social Security (or the Railroad Retirement Board) gets your completed forms. You'll need to fill out an extra form showing you had job-based health coverage while you or your spouse were working.
- If you want more coverage, you have a limited time to get it. Find timeframes to get more coverage. ⓘ

Avoid the penalty & gap in coverage
If you miss this 8-month Special Enrollment Period, you'll have to wait to sign up and go months without coverage. You might also pay a monthly penalty for as long as you have Part B. The penalty goes up the longer you wait to sign up.
How much is the Part B penalty? ⓘ

Medicare General Enrollment Period

For Late Part B Enrollments

Annual Part B General Enrollment Period

- January 1 – March 31 each year
- Indivdiual may enroll in the General Enrollment Period only if:
  - The individual did not sign up when first eligible (Initial Enrollment Period); and
  - The indivdiual is not eligible for a Special Enrollment period

Part B Coverage Effective Date

- Coverage is effective the first day of the month after signing up (new rule in 2023 from the BENES Act)
  - Will generally result in a higher premium charge for Part B (late enrollment penalty)
  - Monthly Part B premium may go up 10% for each full 12-month period late

Where to Direct Employees

When to Sign Up? https://www.medicare.gov/basics/get-started-with-medicare/sign-up/when-can-i-sign-up-for-medicare
Part B Late Enrollment Penalty: https://www.medicare.gov/your-medicare-costs/part-b-costs/part-b-late-enrollment-penalty
Medicare Eligibility and Premium Calculator: https://www.medicare.gov/eligibilitypremiumcalc/

Medicare Part A Enrollment

Generally Can Enroll at Anytime

Part A is Premium-Free for Most

- Generally premium-free if indivdiual or spouse worked and paid Medicare taxes for at least 10 years (40 quarters)
  - Medicare Part A is available for a premium (up to $506/month) for those who don't qualify for premium-free access
  - If don't qualify, must sign up at Initial Enrollment Period to avoid additional 10% penalties

Part A Coverage Can be Retroactive Up to Six Months

- Premium-free Part A coverage begins:
  - Six months back from the date the individual applies for Medicare or Social Security benefits; but
  - No earlier than the first month the individual was eligible for Medicare.
  - Note that anyone who begins receiving Social Security retirement benefits is automatically enrolled in Medicare Part A with no opt-out permitted (see HSA section)

Where to Direct Employees

When to Sign Up? https://www.medicare.gov/basics/get-started-with-medicare/sign-up/when-can-i-sign-up-for-medicare
Part A Late Enrollment Penalty: https://www.medicare.gov/your-medicare-costs/part-a-costs/part-a-late-enrollment-penalty
Medicare Eligibility and Premium Calculator: https://www.medicare.gov/eligibilitypremiumcalc/

04

Medicare Part D

Maintaining Creditable Coverage

Medicare Part D – Notice of Creditable Coverage

Why Is the Notice Requried?

- To inform employees whether their employer-sponsored group health plan's prescription drug coverage is at least as rich as a Medicare Part D plan.
  - The actuarial value of the Rx coverage must meet CMS standards to be "creditable"
  - Creditable status is determined by a safe harbor method or an actuarial determination
  - Carrier or TPA should determine and inform employer clients of creditable status

Why Does the Notice Matter?

- An odd quirk of the Part D rules is that there are no specific penalties for failures
  - However, Part D individuals who fail to maintain creditable coverage for a period of 63 continuous days or more will face a late enrollment penalty upon Part D enrollment
  - Part D premium may go up by at least 1% of the Medicare base beneficiary premium for every one month without creditable coverage (e.g., permanent 19% Part D premium increase for a 19-month gap in creditable coverage)
- **Employees enrolled in creditable coverage need the Notice in case they need to prove they maintained creditable coverage when later enrolling in Part D**
- **Employees enrolled in non-creditable coverage need the Notice to be informed of the late enrollment penalty if they do not choose to enroll in a Part D plan during the Part D open enrollment period**
  - Or to move to a different employer-sponsored plan option that provides creditable coverage (if offered)

Medicare Part D – Notice of Creditable Coverage

Creditable and Non-Creditable Model Notice Letters

https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/Model-Notice-Letters.html

MODEL INDIVIDUAL **CREDITABLE** COVERAGE DISCLOSURE NOTICE LANGUAGE
FOR USE ON OR AFTER APRIL 1, 2011

OMB 0938-0990

Important Notice from [Insert Name of Entity] About Your Prescription Drug Coverage and Medicare

Please read this notice carefully and keep it where you can find it. This notice has information about your current prescription drug coverage with [Insert Name of Entity] and about your options under Medicare's prescription drug coverage. This information can help you decide whether or not you want to join a Medicare drug plan. If you are considering joining, you should compare your current coverage, including which drugs are covered at what cost, with the coverage and costs of the plans offering Medicare prescription drug coverage in your area. Information about where you can get help to make decisions about your prescription drug coverage is at the end of this notice.

There are two important things you need to know about your current coverage and Medicare's prescription drug coverage:

1. **Medicare prescription drug coverage became available in 2006 to everyone with Medicare. You can get this coverage if you join a Medicare Prescription Drug Plan or join a Medicare Advantage Plan (like an HMO or PPO) that offers prescription drug coverage. All Medicare drug plans provide at least a standard level of coverage set by Medicare. Some plans may also offer more coverage for a higher monthly premium.**

2. **[Insert Name of Entity] has determined that the prescription drug coverage offered by the [Insert Name of Plan] is, on average for all plan participants, expected to pay out as much as standard Medicare prescription drug coverage pays and is therefore considered Creditable Coverage. Because your existing coverage is Creditable Coverage, you can keep this coverage and not pay a higher premium (a penalty) if you later decide to join a Medicare drug plan.**

Inflation Reduction Act: What's New?

The IRA made significant changes to Medicare Part D coverage, including an out-of-pocket maximum capping enrollee costs at $2,000 (indexed after 2025).

- The creditable status determination can be a pain point
- **Ideally the plan's insurance carrier or TPA will perform the assessment and inform the employer of creditable status!**
- Where the carrier/TPA refuses to perform the analysis, the employer will need to determine creditable status independently
- The potential loss of the simplified determination approach could lead to employers needing to engage with an actuary to perform the creditable status assessment

HDHP Creditable Status

More Difficult Starting 2025

- HDHPs have always had a more difficult time meeting creditable status than standard health plans
- CMS guidance states that *"it may be more difficult for high deductible health plans to qualify as creditable coverage"* starting in 2025 when IRA enhancements take effect

What if HDHP is Non-Creditable?

- Employee should take note of the non-creditable coverage notice to either a) enroll in a different creditable plan option made available, or b) enroll in Part D to avoid late enrollment penalties

Simplified Determination

May Not Be Available After 2025

Two Different Approaches

1. Simplified Determination
2. Actuarial Determination

Simplified Determination at Risk

- CMS initially threatened to remove the simplified option as of 2025
- After receiving many comments, they agreed to continue to make it available at least through 2025
- CMS will *"re-evaluate"* whether it will remain available or be revised for 2026 and beyond
- If it is eliminated, actuarial determinations would be required

Medicare Part D – Notice of Creditable Coverage

When Must Employers Provide the Notice?

- Employers must provide the Notice annually prior to October 15th (and upon any change in creditable status)
  - Designed to be provided prior to the Part D open enrollment period (October 15 – December 7)

Who Must Receive the Notice?

- The Notice must be provided by employers to “Part D eligible individuals” who are enrolled or seeking to enroll in the employer’s plan that provides prescription drug coverage
  - Includes all individuals enrolled in Part A or Part B who live in the service area of a Part D plan
- As a practical matter, employers will not know which employees, spouses, or dependents are enrolled in Part A or Part B—nor who is seeking to enroll in the employer’s plan
  - **As a result, most employers will provide the Notices to all employees annually to ensure all required recipients receive it**
  - Generally, more work than it’s worth to try to target the Notice to only Part D eligible individuals

How to Provide?

- Paper delivery by hand or first-class mail is one option
- Electronic delivery permitted to “plan participants who have the ability to access electronic documents at their regular place of work if they have access to the plan sponsor’s electronic information system on a daily basis as part of their work duties.”
  - Similar to the ERISA electronic disclosure safe harbor rule

Medicare Part D – Notice of Creditable Coverage

Combining with Other Materials

- The Notice may be provided with other materials, including open enrollment materials or other annual notices (e.g., CHIP, WHCRA), as long as it is **"prominent and conspicuous"**
  - If the Notice is not on the first page of any such combined materials, the first page should include a separate box that is bolded or offset on the first page and prominently references the Notice in at least 14-point font
  - **CMS model box:** https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/downloads/Updated_Guidance_09_18_09.pdf

Example of reference to creditable or non-creditable coverage requirements:

> ***If you (and/or your dependents) have Medicare or will become eligible for Medicare in the next 12 months, a Federal law gives you more choices about your prescription drug coverage. Please see page xx for more details.***

Annual Filing with CMS

- The Part D rules require plan sponsors to complete **an annual online disclosure form to CMS within 60 days after the beginning of the plan year**
  - March 1 deadline for calendar plan years
- CMS disclosure reflects whether the prescription drug coverage under the plan is creditable
  - **Instructions:** https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/CCDisclosure.html
  - **Filing:** https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/CCDisclosureForm.html

05

Medicare and HSAs

What Happens at Age 65?

HSAs and Reaching Age 65 (Medicare)

Employees Do Not Lose HSA Eligibility Automatically Upon Reaching Age 65!

- Only Medicare enrollment causes an individual to lose HSA eligibility
- Many employees age 65 and older do not enroll in Medicare
- **Note that anyone who is receiving Social Security retirement benefits is automatically enrolled in Medicare Part A (no opt-out permitted), and therefore automatically loses HSA eligibility**

No Longer Subject to the 20% Additional Tax

- Individuals who reach age 65 do not pay the 20% additional tax on distributions from the HSA for non-medical expenses
- This is why HSAs are also frequently used as a retirement savings vehicle (IRA-like)
- Remember that only ordinary income taxes apply for any non-medical distribution upon reaching age 65 (like a traditional 401(k)/IRA)

Example	Result
• Jose turns 65 in August 2025 but does not enroll in Medicare • He has HDHP coverage (with no disqualifying coverage) in 2025 • In December 2025, Jose decides to purchase a $2,500 75” 8K Ultra HD TV with HSA funds	• Jose is HSA-eligible for all of 2025 (and therefore can contribute the full statutory maximum plus the $1k catch-up) • The $2,500 HSA distribution for the 8K UHDTV is subject only to ordinary income taxes

HSAs Post-Age 65 (Medicare)

Delayed Medicare Enrollment Causes Six-Month Retroactive Enrollment

- No retroactive enrollment issue for individuals who enroll in Medicare at age 65 (or begin Social Security prior to age 65, and therefore have Part A coverage automatically at 65)
- However, delaying enrolling in Medicare until after first becoming eligible (including later application for Social Security benefits) means the later Part A enrollment will be retroactive for up to six months
- **The six-month retroactive enrollment in Part A will block HSA eligibility retroactive to the start of the Medicare coverage**

How to Address the Retroactive Enrollment

1. Plan Ahead: Stop making or receiving HSA contributions at least six months before applying for Medicare; or
2. Correct Mistake: Make a corrective distribution of the excess contributions by the due date (including extensions) for filing the individual tax return (generally April 15, without extension)

Example

- Jose turns 65 in August 2024 but does not enroll in Medicare
- **Jose signs up for Social Security benefits in on October 1, 2025, which automatically enrolls him in Medicare Part A retroactive to April 1, 2025**

Result

- Jose retroactively loses HSA eligibility as of April 2025—and therefore can contribute only 3/12 of the HSA statutory limit for 2025 (plus 3/12 of the catch-up contribution)
  - If he already contributed in excess of that limit, he must make a corrective distribution of the excess contributions by April 15, 2026 (assuming no indidviual return extension)

HSAs and Medicare

Where to Direct Employees

CMS Fact Sheet
Deciding Whether to Enroll in Medicare Part A and Part B When You Turn 65

https://www.cms.gov/Outreach-and-Education/Find-Your-Provider-Type/Employers-and-Unions/FS4-Medicare-for-people-over-65-nearing-retirment.pdf

FACT SHEET: Deciding Whether to Enroll in Medicare Part A and Part B When You Turn 65

☐ **I have health insurance based on my (or my spouse's) current employment, from an employer with *20 or more employees*** (this includes those with Federal Employees Health Benefits (FEHB))

> ***NOTE:*** *If you have COBRA or retiree coverage, or if your employer gives you an amount of money to purchase health insurance, you do NOT have health insurance based on "current employment." If you have one of these types of insurance, you should find that situation in the fact sheet.*

Do I have a health savings account?

Health savings accounts (HSAs) are a special kind of tax-deferred account available only to people who have a high-deductible health plan. HSAs are not the same as a flexible spending account (FSA) or health reimbursement account (HRA). If you aren't sure if you have an HSA, ask your benefits administrator or plan.

☐ I have an HSA

☐ I do not have an HSA

Your decision to enroll in Part A and Part B **depends on whether you have a high-deductible health plan with a health savings account (HSA):**

○ ***I do NOT have a Health Savings Account (HSA)***

Part A: If you qualify for premium-free Part A, you should enroll in Part A when you turn 65. However, if you have to pay a premium for Part A, you can delay Part A until you (or your spouse) stop working or lose that employer coverage. You will NOT pay a penalty for delaying Part A, as long as you enroll within 8 months of losing your coverage or stopping work (whichever happens first).

Part B: You can delay Part B until you (or your spouse) stop working or lose that employer coverage. This allows you to save the cost of your Part B premium. It also allows you to postpone your one-time "Medigap open enrollment period" until a later time, when you may want to purchase this type of coverage.

You will NOT pay a penalty for delaying Medicare, as long as you enroll within 8 months of losing your coverage or stopping work (whichever happens first). You'll want to plan ahead and enroll in Part B at least a month before you stop working or your employer coverage ends, so you don't have a gap in coverage.

▶▶ *You have completed TASK 2. Go to TASK 3 on page 7.*

HSAs and Medicare

Where to Direct Employees

CMS Fact Sheet
Deciding Whether to Enroll in Medicare Part A and Part B When You Turn 65

https://www.cms.gov/Outreach-and-Education/Find-Your-Provider-Type/Employers-and-Unions/FS4-Medicare-for-people-over-65-nearing-retirment.pdf

○ ***I have a High-Deductible Health Plan AND a Health Savings Account (HSA)***

Once you enroll in any part of Medicare, you won't be able to contribute to your HSA. If you would like to continue making contributions to your HSA, you can delay both Part A and Part B until you (or your spouse) stop working or lose that employer coverage. You will NOT pay a penalty for delaying Medicare, as long as you enroll within 8 months of losing your coverage or stopping work (whichever happens first).

You should talk with your employer benefits manager about whether it makes sense to delay Part A and Part B.

NOTE: *If you qualify for premium-free Part A, your coverage will go back (retroactively) up to 6 months from when you sign up. So, you should stop making contributions to your HSA 6 months before you enroll in Part A and Part B (or apply for Social Security benefits, if you want to collect retirement benefits before you stop working).*

You have completed TASK 2. Go to TASK 3 on page 7.

HSAs Post Age-65 (Medicare) – Using Accumulated HSA Funds

Tax-Free Distribution Ability Not Affected by HSA Eligibility

- An individual does not need to maintain HSA eligibility to take tax-free distributions for medical expenses
- Means the HDHP participant could build up an HSA balance, move to Medicare, and still use that HSA account to cover qualifying medical expenses tax-free
- **Remember:** HSA eligibility is relevant only for determining the ability to make or receive HSA contributions—not for purposes of tax-free distributions
  - This is a VERY common misconception, don't fall for it!

Example

- **Marcel moves to Medicare in January 2026 with a $1,500 balance in his HSA**
- Marcel incurs $1,500 in qualifying medical OOP expenses through deductibles, copays, coinsurance, contact lenses, sunscreen, glasses, and bandages in 2026

Result

- Marcel can take a $1,500 tax-free **distribution from his HSA** in 2026 to cover the qualifying medical expenses he incurred—even after losing HSA eligibility!
- Loss of eligibility just means he can't make or receive HSA **contributions** in 2026

HSAs and Medicare – The Premium Option

General Rule: No Tax-Free Qualified HSA Distributions for Premiums

- Similar to the health FSA rule, the general rule for HSAs is that premiums are not a qualifying medical expense
- This is different from the general HRA rule, which does permit distributions for premiums (although ACA issues abound)

Exceptions: The Following Premiums Are Qualifying Expenses

1. **COBRA Premiums:** COBRA or any other continuation coverage premiums required by federal law (including USERRA continuation coverage)
2. **Long-Term Care (LTC) Insurance Premiums:** Annual limitations for eligible LTC premium amounts apply
3. **Any Health Plan Premium While Individual is Receiving Federal or State Unemployment:** Includes health premiums for a spouse or dependent receiving unemployment
4. **Age 65+ Premiums:** Premiums for Medicare (excluding any Medicare supplemental policy) or employer-sponsored retiree coverage

HSAs and Medicare – The Premium Option

Example

- Xander is involuntarily terminated from employment at age 64 and begins receiving unemployment
- At the time of termination, he was covered under the company's HDHP with an HSA balance of $5,000

Result

- Xander can pay for his COBRA premiums with his $5,000 HSA balance as tax-free qualified distributions
- He could also pay for Exchange coverage premiums (or any other coverage) with tax-free HSA distributions because he is receiving unemployment
- Upon reaching age 65, Xander can use any remaining HSA funds to pay for Medicare premiums tax-free

HSAs and Medicare

Where to Direct Employees

IRS Publication 969
Health Savings Accounts and Other Tax-Favored Health Plans

https://www.irs.gov/pub/irs-pdf/p969.pdf

Additional tax. There is an additional 20% tax on the part of your distributions not used for qualified medical expenses. Figure the tax on Form 8889 and file it with your Form 1040, 1040-SR, or 1040-NR.

Exceptions. There is no additional tax on distributions made after the date you are disabled, reach age 65, or die.

Insurance premiums. You can't treat insurance premiums as qualified medical expenses unless the premiums are for any of the following.

1. Long-term care insurance.
2. Health care continuation coverage (such as coverage under COBRA).
3. Health care coverage while receiving unemployment compensation under federal or state law.
4. Medicare and other health care coverage if you were 65 or older (other than premiums for a Medicare supplemental policy, such as Medigap).

WRAP-UP

Takeaways

Medicare for Employers – Top Five Issues

Remember: Direct employees to the Medicare & You Handbook, the Contact Medicare Website, SHIP Medicare Counseling, and/or health insurance consumer assistance programs (HICAP) for other issues unrelated to employer-sponsored group health plans.

1 Medicare Secondary Payer (MSP)	**2** COBRA	**3** Special Enrollment Periods	**4** Medicare Part D	**5** HSAs and Age 65 (Medicare)

• Employers with 20+ employees are subject to the MSP rules based on age
• Must offer same benefits under same conditions to employees age 65+
• **Key Limitations**
  • Medicare pays secondary for employees/spouses in active coverage
  • Employers cannot provide incentives for employees to enroll in Medicare
  • Extra caution required for domestic partners eligible for Medicare
	• COBRA coverage terminates upon enrollment in Medicare **after** electing COBRA
	• Retirees can (but probably don't want to) maintain COBRA and Medicare if they enroll in Medicare prior to electing COBRA (Medicare will be primary)
	• Medicare entitlement (enrollment) typically is not a COBRA qualifying event (MSP prohibits)
		• Retirees must enroll in Medicare within eight months to avoid penalties
		• COBRA coverage does **not** qualify to avoid Part B late enrollment penalties
		• Employees can enroll in Medicare during seven-month period surrounding 65th birthday—but most will choose to instead remain in employer plan
			• Employers must provide a Notice of Creditable (or Non-Creditable) Coverage to employees each year by October 15th
			• Verifies whether the plan's Rx coverage is at least as rich as Part D plans
			• IRA changes makes it more difficult for HDHPs to maintain creditable status, and simplified determination option is at risk
			• **Key Reasons for Notices**
			  • Employees can verify that they aren't subject to late enrollment penalties
			  • Employees in a non-creditable option can switch plans or enroll in Part D
				• Employees do **not** lose HSA eligibility upon reaching age 65!
				• Loss of HSA eligibility occurs only upon Medicare enrollment (which can be 6 months retro)
				• The 20% additional tax for non-medical distributions disappears at age 65
				  • Means the HSA functions like a traditional IRA for non-medical distributions upon reaching age 65—ordinary income taxes only
				• Even upon Medicare enrollment, can still use accumulated HSA funds to pay for medical expenses on a tax-free basis
				  • Losing HSA eligibility prevents contributions (not distributions)
				  • Medicare premiums qualify as a tax-free medical expense!

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Medicare for Employers

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Thank you

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