

# COBRA & Medicare

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## Medicare: Eligibility & Entitlement

Medicare Part A and B are available for individuals who work for ten years (forty quarters) and paid Medicare Taxes. Otherwise, persons may still get Medicare by paying a much higher premium. Eligibility typically occurs at age 65, and automatic enrollment only occurs if the individual receives Social Security or benefits under the Railroad Retirement Board. If this is the case, a Medicare card is mailed to the individual three months before their 65<sup>th</sup> birthday. Otherwise, the eligible individuals must enroll. Typically, there is an enrollment period of seven months, three months before the 65<sup>th</sup> birthday, the birthday month, and three months after reaching 65.

Medicare entitlement is quite different than being Medicare eligible. The terms are not used interchangeably in Medicare regulations and should be noted as differing in definition. Generally, entitlement requires that one be eligible **and** enroll in Medicare, whereas eligibility means one has met all the entitlement requirements but has not yet enrolled. See, e.g., 42 CFR § 406.3.

## Medicare Secondary Payor Rule

The Medicare Secondary Payer (MSP) rule, 42 CFR 411.108, provides that Medicare is the secondary payer for all Medicare beneficiaries (employees) who are currently working and over age 65. The only exception to this is for small employers with under 20 employees. The penalties for any employer covered under the MSP that entices employees to drop the group health plan and go with Medicare are significant. First off, the penalty per employee in 2020 was \$9,639. However, this monetary fine pales in comparison to the fact that the employer would have to reimburse Medicare for all the claims paid. The IRS also gets a piece of the pie and imposes a 15% surcharge. Therefore, for working employees who are over 65 and work for companies with more than 20 employees, the plan documents should **not** state that coverage terminates once they turn 65.

## COBRA

Based on the above MSP, COBRA eligibility comes into play. Do not forget that there must be a qualifying event for COBRA, and the qualifying event leads to a loss in coverage. There is no loss of coverage for an active employee who reached age 65. However, we see instances where the

employee voluntarily withdraws from the group health plan when the employee reaches 65. Since there is no loss of coverage by plan design, the spouse is not a Qualified Beneficiary and not entitled to COBRA. In short, as stated above, if you have an active employee who becomes entitled to Medicare, you must continue to offer benefits. Plan Administrators should be careful when allowing active employees to withdraw from the plan at 65. If they offer the spouse COBRA coverage, the carrier could decline, and worse yet, the Centers for Medicare and Medicaid, who enforce the MSP, could consider this an enticement.

**We hope this information is helpful to you. Please give us a call if we can be of assistance to you with Health & Welfare Compliance, Actuarial Services, Healthcare Reform, HIPAA Security, and COBRA/Retiree Billing Administration.**

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