abd Insurance & Financial Services

# Office Hours

## Medicare for Employers:
## The Top Five Issues for Group Health Plans

Audio

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## 2017 Employee Benefits Year in Review:

**Plus What Lies Ahead in 2018**

- Full review of the ACA repeal/replace effort, where it stands, and what to expect
- The Tax Cuts and Jobs Act paid family and medical leave, 401(k) loan rules, and more!

## Health Benefits While on Leave:

**The Rules All Employers Need to Know**

- Understand how protected leave rules under FMLA/CFRA/PDL affect employee benefits
- Plus non-protected leave, ACA, ADA, COBRA, and other leave issues you need to know

## The San Francisco Paid Parental Leave Ordinance:

**Complying with the City's New 2017 Paid Leave Law**

- As of 2017, San Francisco is the first city to require employer-paid parental leave
- Supplements the amount available through California PFL for new child bonding

## Health Benefits for Domestic Partners:

**Review of the Tax and Coverage Rules for Employers**

- Domestic partners may be same-sex, opposite-sex, registered, or company-defined
- Coverage, tax, and other compliance issues at the federal, state, and local levels

# Medicare & Employers: The Big Picture

## How do Employers Interact with Medicare?

**Think of Medicare issues in the same way as tax issues**

- Stick to a high-level overview, avoid specifics where possible, and advise consultation with expert advisers where the employee needs more information
- As with tax issues, the vast majority of Medicare issues are unrelated to employee benefits and should not be addressed by the employer
- In those cases, it's appropriate to route employees to the Medicare & You Handbook, the Contact Medicare Website, or health insurance consumer assistance programs (HICAP)
- However, also as with taxes, employers should be versed in those limited Medicare issues that relate to employer-sponsored group health plans

## Top Five Medicare Issues for Employers

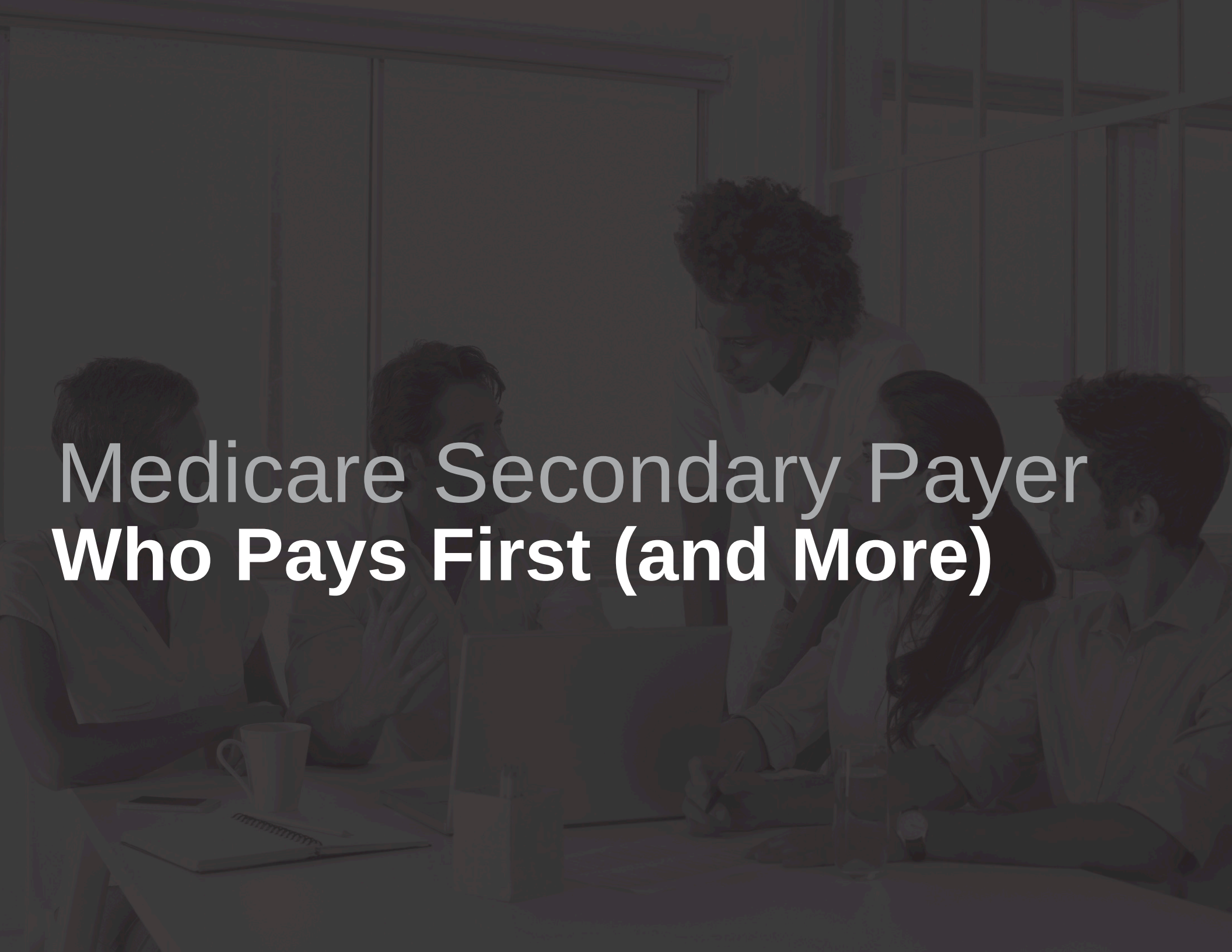
1) MSP: Medicare Secondary Payer Rules for Employer-Sponsored Group Health Plans

2) COBRA: How COBRA Interacts with Medicare

3) Special Enrollment Periods: Part B Enrollment Deadline After Loss of Active Coverage

4) Part D: Avoiding Late Enrollment Penalties Through Creditable Coverage

5) HSA: How and When Medicare Affects HSA Eligibility



# Medicare Secondary Payer
# **Who Pays First (and More)**

# Employers Subject to MSP Rules: Based on Size and Type

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 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)
- Count full-time and part-time employees

## Entitlement Based on Disability:

**100+ Employees**

**Applies to "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

# 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"**

**COBRA or Retiree Coverage:**
**MSP Does Not Apply**

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

- **For active employees and spouses Medicare will pay Secondary**
- A standard coordination of benefits rule that 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

**Medicare Pays Primary**

- **The employer-sponsored 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

# Prohibited Incentives:
# Can't Encourage Medicare Enrollment

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.

**A**

**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*
  - *Medicare supplement reimbursement permitted under ACA (but not MSP)*

**B**

**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)

**C**

**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 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 rules

# 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

- 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)

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, merely being eligible 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:
# 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 (see prior slides, 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

- 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, 2018, and he retires December 31, 2018
- Evan elects COBRA for himself, his wife, and his kids effective January 1, 2019
- Evan's COBRA maximum coverage period is 18 months (until June 30, 2020)
- Wife and kids can continue coverage through COBRA for 30 months (until June 30, 2021)

# Special Enrollment Periods
# **Avoiding Medicare Penalties After Retiring**

# Medicare Initial Enrollment Period: Seven-Month Period Around Age 65

## Seven-Month Initial Enrollment Period

- When you're first eligible for Medicare based on age, you have a seven-month Initial Enrollment Period to sign up for Part B
  - Begins three months before the month you turn 65
  - Includes the month you turn 65
  - Ends three months after the month you turn 65

## Coverage Effective Date if Enrolling in Initial Enrollment Period

- If enrolling during the three months before the month you turn 65:
  - Coverage starts the first day of the month you turn 65
  - If your birthday is first day of the month, coverage is effective first day of the prior month
- If enrolling the month of your birthday or the three months thereafter:
  - Coverage starts 1-3 months after signing up (depends which month you enroll)

## Where to Direct Employees

- **When to Sign Up?:** https://www.medicare.gov/sign-up-change-plans/get-parts-a-and-b/when-sign-up-parts-a-and-b/when-sign-up-parts-a-and-b.html
- **When Will My Coverage Start?:** https://www.medicare.gov/sign-up-change-plans/get-parts-a-and-b/when-coverage-starts/when-coverage-starts.html

# Medicare Initial Enrollment Period: Seven-Month Period Around Age 65

## Where to Direct Employees

- **CMS Guide to Enrolling in Medicare:** https://www.medicare.gov/Pubs/pdf/11036-Enrolling-Medicare-Part-A-Part-B.pdf

| **3 months before** the month you turn **65** | **2 months before** the month you turn **65** | **1 month before** the month you turn **65** | The month you turn **65** | **1 month after** you turn **65** | **2 months after** you turn **65** | **3 months after** you turn **65** |
|---|---|---|---|---|---|---|
| Sign up early to avoid a delay in coverage. To get Part A (if you have to buy it) and/or Part B the month you turn 65, you must sign up during the first 3 months before the month you turn 65. | | | If you wait until the last 4 months of your Initial Enrollment Period to sign up for Part A (if you have to buy it) and/or Part B, your coverage will be delayed. See the chart on the next page. | | | |

**If you enroll in Part A (if you have to buy it) and/or Part B the month you turn 65 or during the last 3 months of your Initial Enrollment Period, your start date will be delayed:**

| If you enroll in this month of your initial enrollment period: | Your coverage starts: |
|---|---|
| The month you turn 65 | 1 month after enrollment |
| 1 month after you turn 65 | 2 months after enrollment |
| 2 months after you turn 65 | 3 months after enrollment |
| 3 months after you turn 65 | 3 months after enrollment |

# Medicare Special Enrollment Period:
# Avoiding Penalties After Retirement

Retiring employees often are not aware of the timing issues they face with respect to Medicare enrollment, and how loss of active coverage plays a crucial role.

**Special Enrollment Period:**
**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:

1) Penalties when enrolled in Part B
2) Waiting until the next Medicare OE for coverage (January 1 – March 31 for coverage effective July 1)

# Medicare Special Enrollment Period: Avoiding Penalties After Retirement

## Where to Direct Employees

- **Should You Enroll in Part B?:** https://www.medicare.gov/sign-up-change-plans/get-parts-a-and-b/should-you-get-part-b/should-i-get-part-b.html

**When your employment or employer/union coverage ends**

Once the employment (or your employer/union coverage) ends, 3 things happen:

1. You may be able to get COBRA coverage, which continues your health insurance through the employer's plan (in most cases for only 18 months) and probably at a higher cost to you.
2. You have 8 months to sign up for Part B without a penalty, whether or not you choose COBRA. To sign up for Part B while you're employed or during the 8 months after employment ends, complete an Application for Enrollment in Part B (CMS-40B) and a Request for Employment Information (CMS-L564). If you choose COBRA, don't wait until your COBRA ends to enroll in Part B. If you don't enroll in Part B during the 8 months after the employment ends:
   - You may have to pay a penalty for as long as you have Part B.
   - You won't be able to enroll until January 1–March 31, and you'll have to wait until July 1 of that year before your coverage begins. This may cause a gap in health care coverage.
3. If you already have COBRA coverage when you enroll in Medicare, your COBRA will probably end. If you become eligible for COBRA coverage after you're already enrolled in Medicare, you must be allowed to take the COBRA coverage. It will always be secondary to Medicare (unless you have End-Stage Renal Disease (ESRD)). Learn more about how Medicare works with other insurance.

# Medicare General Enrollment Period: For Late Part B Enrollments

## Annual Part B General Enrollment Period

- January 1 – March 31 each year
- You may enroll in the General Enrollment Period only if:
  - You didn't sign up when first eligible (Initial Enrollment Period); and
  - You aren't eligible for a Special Enrollment period

## Part B Coverage Effective Date

- Coverage is effective as of July 1
  - 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/sign-up-change-plans/get-parts-a-and-b/when-sign-up-parts-a-and-b/when-sign-up-parts-a-and-b.html
- **Part B Late Enrollment Penalty:** https://www.medicare.gov/your-medicare-costs/part-b-costs/penalty/part-b-late-enrollment-penalty.html
- **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

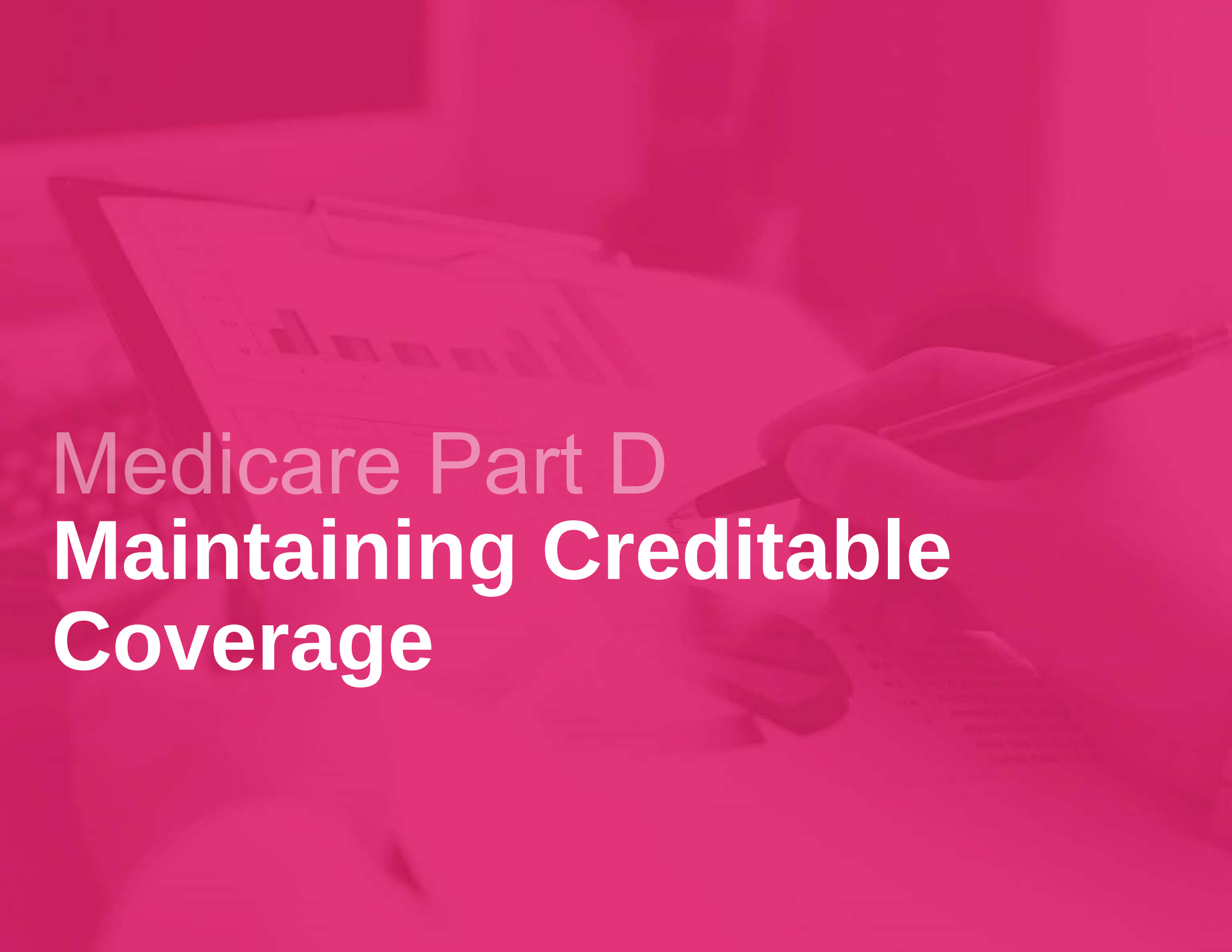
- Generally premium-free if you or your spouse worked and paid Medicare taxes for at least 10 years (40 quarters)
  - Medicare Part A is available for a premium (up to $422/month in 2018) for those who don't qualify for premium-free access
  - If don't qualify, must sign up at Initial Enrollment Period 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 you apply for Medicare or Social Security benefits; but
  - No earlier than the first month you were 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/sign-up-change-plans/get-parts-a-and-b/when-sign-up-parts-a-and-b/when-sign-up-parts-a-and-b.html
- **Part A Late Enrollment Penalty:** https://www.medicare.gov/your-medicare-costs/part-a-costs/penalty/part-a-late-enrollment-penalty.html
- **Medicare Eligibility and Premium Calculator:** https://www.medicare.gov/eligibilitypremiumcalc/



Medicare Part D

# Maintaining Creditable Coverage

# Medicare Part D:
# Notice of Creditable Coverage

## Why is the Notice Required?

- 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.**

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# Medicare Part D:
# Notice of Creditable Coverage

## When Must Employers Provide the Notice?

- Employers must provide the Notice annually prior to October 15th
  - 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 simply 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

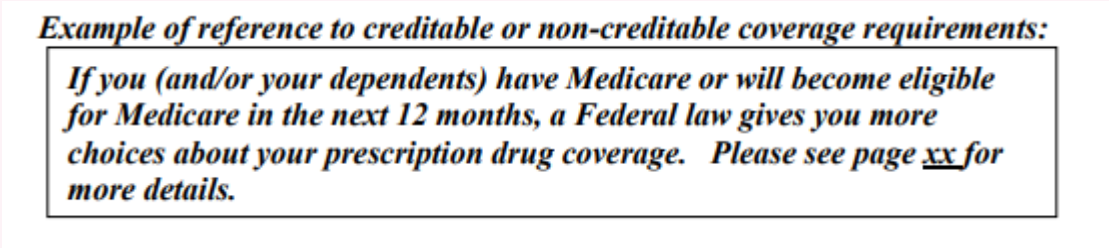
## How to Provide?

- 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 or 2 deadline for calendar plan years (depending on leap year)
- 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

# Medicare and HSAs
## What Happens at Age 65?

# HSAs and Reaching Age 65 (Medicare)

## You 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

## You Are 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 you will need to pay the ordinary income tax on any non-medical distribution even once you reach age 65 (like a traditional 401(k)/IRA)

## Example

- Jose reaches age 65 in August 2018 but does not enroll in Medicare
- He is covered by an HDHP with no disqualifying coverage for all of 2018
- In December 2018, Jose decides to purchase a $2,500 75” Ultra HD 4K TV with HSA funds

## Result

- Jose is HSA eligible for all of 2018 (and therefore can contribute the max plus catch-up)
- The $2,500 HSA distribution for the 4K UHDTV is subject only to ordinary income taxes

# HSAs and 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, if you delay enrolling in Medicare until after first becoming eligible (including later application for Social Security benefits), 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 reaches age 65 in August 2017 but does not enroll in Medicare
- Jose signs up for Social Security benefits in on October 1, 2018, which automatically enrolls him in Medicare Part A retroactive to April 1, 2018

### Result

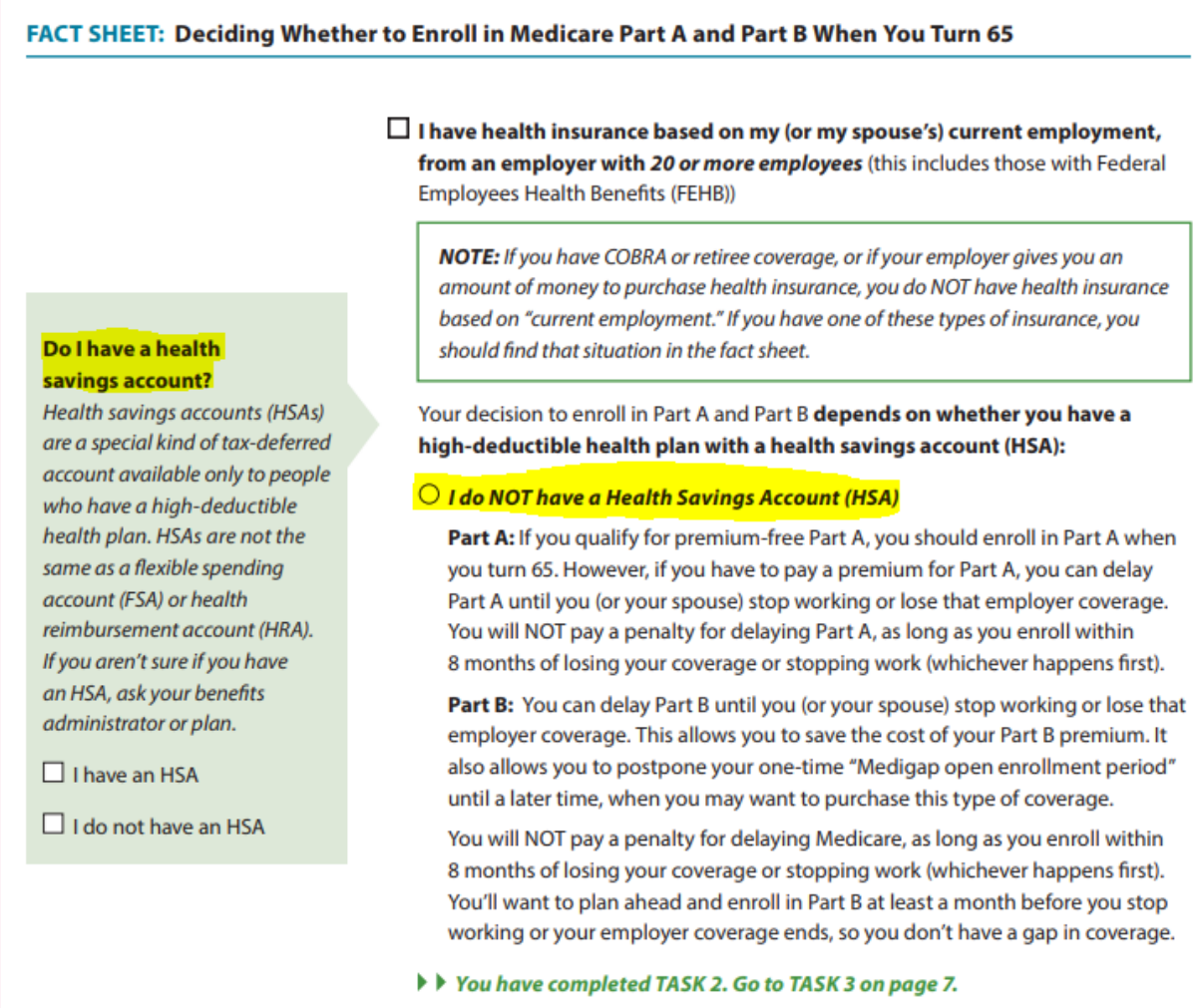
- Jose retroactively loses HSA eligibility as of April 2018—and therefore can contribute only 3/12 of the HSA statutory limit for 2018 (plus 3/12 of the catch-up contribution)
- If he already contributed in excess of that limit, he must make a corrective distribution of the excess contributions by April 15, 2019 (assuming no extensions to his individual return)

# 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/FS3-Enroll-in-Part-A-and-B.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.

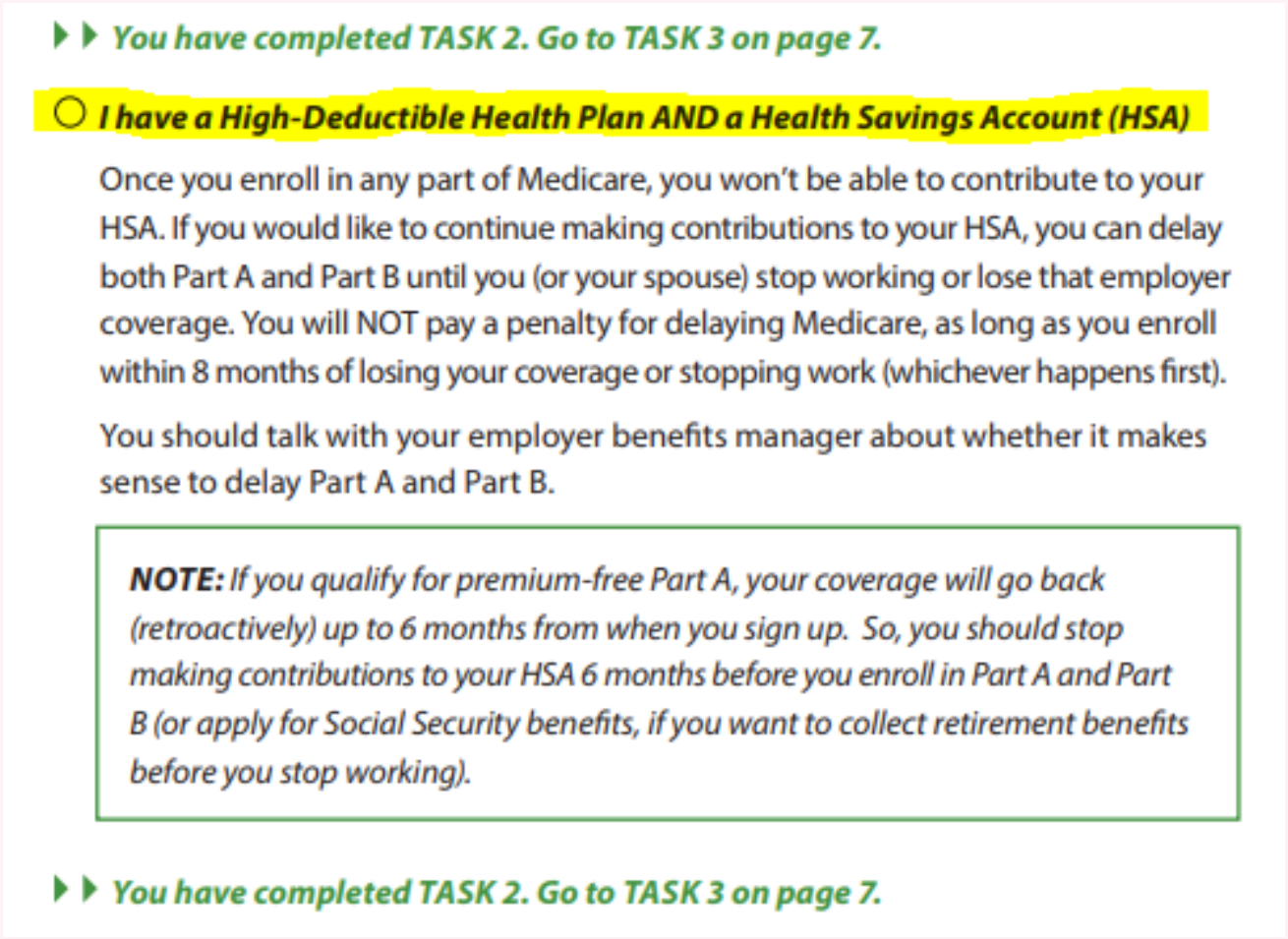
You will NOT pay a penalty for delaying Medicare, as long as you enroll within 8 months of losing your coverage or stopping work (whichever happens first). You'll want to plan ahead and enroll in Part B at least a month before you stop working or your employer coverage ends, so you don't have a gap in 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/FS3-Enroll-in-Part-A-and-B.pdf



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

○ ***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.*

# Why HDHP HSA?


# HSAs and 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 2019 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 2019

Result

- Marcel can take a $1,500 tax-free distribution from his HSA in 2019 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 2019

# HSAs and Medicare:
# The Premium Option

## General Rule is 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 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

### 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 the premiums Exchange coverage (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 or Form 1040NR.

***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:

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 for Group Health Plans

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

1

**Medicare Secondary Payer (MSP)**

- 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*

2

**COBRA**

- COBRA coverage terminates if you enroll 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 typically is not a COBRA qualifying event (MSP prohibits)

3

**Special Enrollment Periods**

- 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

# Medicare for Employers:
# Top Five Issues for Group Health Plans

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

4

**Medicare Part D**

- 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

*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*

5

**HSAs and Age 65 (Medicare)**

- You do not lose HSA eligibility upon reaching age 65!
- You lose HSA eligibility if you enroll in Medicare (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 if you enroll in Medicare, you can still use your accumulated HSA funds to pay for medical expenses on a tax-free basis
  - *The loss of HSA eligibility prevents further contributions (not distributions)*
  - *Medicare premiums qualify as a tax-free medical expense!*

# Content Disclaimer

Medicare for Employers

**The intent of this analysis is to provide the recipient with general information regarding the status of, and/or potential concerns related to, the recipient's current employee benefits issues. This analysis does not necessarily fully address the recipient's specific issue, and it should not be construed as, nor is it intended to provide, legal advice. Furthermore, this message does not establish an attorney-client relationship. Questions regarding specific issues should be addressed to the person(s) who provide legal advice to the recipient regarding employee benefits issues (*e.g.*, the recipient's general counsel or an attorney hired by the recipient who specializes in employee benefits law).**

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# Thank you!

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