



CALIFORNIA HEALTH ADVOCATES

## COBRA & Medicare: The Bite You Didn't See Coming

This fact sheet is for **Medicare eligible** employees and their dependents when they lose their employer's health benefits and are eligible for COBRA benefits. It **does not** deal with employees who work for employers with less than 20 employees (or less than 100 if you have a disability), or with people eligible for Medicare because of kidney disease. It also doesn't deal with all the other reasons a person might be eligible for COBRA. For more information on these topics, see our fact sheets B-004 Coverage While You and Your Spouse Work, I-002 on Medicare and End Stage Renal Disease, and F-001 Medicare & Other Health Insurance. You can also visit our Other Health Insurance section under Topics on our website at [cahealthadvocates.org](http://cahealthadvocates.org).

### Working Past Age 65

Many people today continue to work past age 65, and many more are projected to continue working past age 65 in the future. As a result employed seniors often miss their first eligibility for Medicare, or decide they don't need Medicare because they have medical benefits from their employer.

When you stop working, you may be offered COBRA benefits as an extension of your employer's health plan. Yet, there are serious conflicts between COBRA benefits and Medicare, even if you haven't signed up for Medicare.

This fact sheet discusses the connection between COBRA coverage and Medicare. If you have questions, contact your local Health Insurance Counseling and Advocacy Program (HICAP) at 1-800-434-0222 for more information (their phone number is also listed in the footer of this fact sheet).

### What is COBRA?

COBRA is a federal law, the Consolidated Omnibus Budget Reconciliation Act, that gives you and your dependents the legal right to keep your employer health benefits that might otherwise end due to job loss, divorce or death. This is the same health plan you had while working. However, this is not as straightforward as it seems if you are also **eligible** for Medicare, regardless of whether you actually sign up for those benefits.

### When You Become Eligible for Medicare

Medicare **eligibility** begins at age 65, unless a person qualifies for benefits earlier as a result of a disabling physical or medical condition. While a person can enroll for reduced Social Security retirement benefits at age 62, they will not be eligible to enroll in Medicare until age 65.

For decades, eligibility for Medicare and Social Security full retirement benefits began at age 65. However, the age of eligibility for full Social Security retirement benefits has increased and is no longer the same as **eligibility for Medicare**. As a result, eligibility for Medicare and full Social Security retirement benefits no longer match.

**Note:** When you turn 65, you will **not** receive an official notice about your eligibility for Medicare, unless you signed up for early reduced Social Security retirement benefits.

Many working seniors don't sign up for Medicare benefits when they are first eligible to do so. An employed person turning 65 often passes their 65<sup>th</sup> birthday without even knowing they are **eligible for Medicare** benefits because it is no longer connected to their eligibility for Social Security retirement benefits, and no official

notices are sent out telling them they are eligible.

## When Your Employer Provides Health Benefits

Under federal law, when an employer has 20 or more employees (or 100 if a person is disabled) its health plan must treat a **Medicare eligible** employee the same as any other member of the health plan. The health plan is an employee's primary health coverage, and Medicare pays benefits only after the employer's health plan has paid its share.

**Note:** You always have the right to decide if you want to take the employer plan with or without the addition of your Medicare benefits. Or you can reject the employer benefits and rely solely on your Medicare benefits, but then your employer can't offer you any supplemental health benefits.

Even when an employee knows they are eligible, they often don't sign up or enroll for Medicare because it requires another premium payment and Medicare only pays after the health plan pays.

**Exception:** When an individual has permanent kidney failure known as ESRD, an employer plan of any size is required to be primary during a 30-month coordination period.

## COBRA & Medicare Together

A former employee or a dependent who is eligible for COBRA coverage may also be eligible for Medicare. If you already signed up for Medicare Part A, or Part B, you can have Medicare and COBRA at the same time. If you wait to sign up for Medicare until you already have COBRA coverage, or you become eligible for Medicare while on COBRA, your COBRA coverage will usually end.

## How COBRA Benefits Are Paid

While an employee is working, their employer plan pays first, even if a person is also **eligible**

for Medicare. When a person is no longer working and loses their employer's health benefits, a COBRA plan automatically becomes secondary to Medicare, regardless of whether the former employee actually signed up (enrolled) for those Medicare benefits.

For instance, if a former employee hadn't enrolled in Part B of Medicare, the COBRA plan would still be secondary to those benefits based on the individual's eligibility for Part B.

While federal law requires Medicare to pay only after an employer's health plan pays, that rule doesn't apply once an individual is no longer employed. Medicare is primary coverage to COBRA and most other types of health benefits as well.

If a COBRA health plan doesn't know a former employee is eligible for Medicare, and mistakenly pays claims first, they can recover those payments later from the former employee. This is where COBRA can "bite" you.

Example: Barbara left her job at age 67 and signed up for COBRA. Later the COBRA carrier audited their claims and discovered that Barbara was eligible for Medicare at age 65. They billed her for \$150,000 of benefits that should have been covered by Medicare.

## Signing Up for Medicare Benefits While Working

A Medicare eligible individual can sign up for Medicare Part A's hospital coverage as soon as they are eligible. This part of Medicare is premium free for most beneficiaries.

### You can enroll in Medicare Part A in the following ways:

1. Online at [www.SocialSecurity.gov](http://www.SocialSecurity.gov).
2. By calling Social Security at 1-800-772-1213 (TTY users 1-800-325-0778), Monday through Friday, from 7AM to 7PM.

3. In-person at your local Social Security office.

**Note:** There is no premium for Part A for most Medicare beneficiaries, and no late enrollment premium penalty. However, a small number of Medicare beneficiaries who haven't worked the required number of months to qualify for premium free Part A can be charged a premium and a penalty with a restricted period to enroll.

If you have Medicare Part A when you stop working, you will still be eligible for COBRA if you need it.

You don't have to sign up for Medicare Part B's medical benefits while you're working since those medical services are usually covered by an employer's health benefits, and there is a premium cost for this part of Medicare.

**Note:** If an employer's health plan has a large annual deductible, you may want to weigh the premium cost of Part B against the amount of the plan's deductible. Medicare would pay first as your primary insurance until you met the plan's annual deductible amount. If you had a high deductible health plan combined with a Health Savings Account (HSA), you might be able to fund the Medicare Part B premium with those dollars. However, you must stop contributing to the HSA six months prior to the effective date of Medicare. Talk with your employer's health benefits office to make sure you understand all the rules about this combination of health benefits.

Make sure you enroll in Medicare Part B as soon as you stop working and inform the COBRA carrier of your enrollment. Once you are no longer working, you have eight months to sign up for Medicare Part B and 60 days to sign up for Part D. This is known as a Special Enrollment Period or SEP. If you miss these SEP windows, you can be subject to a late enrollment premium penalty for Medicare Part B and Part D, a restricted time of year to enroll, and a delayed date for benefits to begin.

**NOTE:** Talk with your employer's health benefits office to see if the COBRA prescription drug

benefit is equal to or better than Medicare Part D benefits. If it is, you won't need to sign up and pay an additional premium for Part D benefits. And you won't be penalized with a late enrollment penalty.

## Medicare Part B Penalties

There are several potential consequences to delaying your Medicare Part B. Three are listed below:

- 1) **Late Enrollment Penalty:** A premium penalty of 10% will be added to the Part B premium for every 12 months you were eligible to enroll but didn't. This is a lifetime premium penalty and will always be added to your Part B premium payment.
- 2) **Restricted Enrollment Period:** If you missed the SEP to enroll in Part B, you can only enroll for those benefits during the first 3 months of each year known as the General Enrollment Period or GEP.
- 3) **Delayed Benefits:** Part B benefits will not begin until July 1<sup>st</sup> of the year you enrolled under the GEP.

## Medicare Part D Penalties

You have only 63 days to replace your employer's prescription drug benefits without incurring future Medicare Part D late enrollment penalties. If the COBRA benefits are equal to or greater than Medicare's, you won't have to enroll in Part D. If you don't enroll in COBRA you will need a Part D plan within 63 days.

Medicare calculates the Part D premium penalty by the number of months you didn't have Part D benefits and multiplies that number by 1% of a national base premium. This total is rounded to the nearest 10 cents and added to the Part D premium you will pay. This is a lifetime penalty and will always be added to any Part D premium you pay.

**Note:** You always have the right to appeal this penalty and the calculated amount.

**Note:** There are certain periods of time when the federal government extends the time to sign up for Medicare because of a national disaster or some other national event such as COVID-19. During those periods late enrollment penalties may not apply, and benefits may begin right away. When those extensions occur, your local HICAP will have that information. You can call **1-800-434-0222** to find the HICAP office nearest you.

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This fact sheet contains general information and should not be relied upon to make individual decisions. In some situations you may have more than one right that applies at the same time.

If you find yourself in a situation not listed in this fact sheet and/or would like to discuss your specific situation and choices, call the Health Insurance Counseling and Advocacy Program (HICAP). HICAP provides free and objective information and counseling on Medicare and can help you understand your specific rights and health care options. You can call **1-800-434-0222** to make an appointment at the HICAP office nearest you.

**Note:** Online access to all CHA fact sheets on Medicare and related topics is available for an annual subscription. See <https://cahealthadvocates.org/fact-sheets/>.