

Summary: Suggestions for Clarifying Federal Language

Treatment of Medicare 'Eligibility' Under COBRA and MSP Requirements

Beneficiaries who become Medicare "eligible" but have yet to enroll in Medicare Part A or Part B, and so become "entitled" to Medicare benefits often results in group health plans reevaluate any claims paid under COBRA coverage or in connection with MSP. These individuals are then exposed to unexpected out-of-pocket costs for claims paid by the group health plan.

Neither the current law statutory provisions of COBRA or the MSP Requirements refer to Medicare "eligibility" and only refer to "entitlement" (except for the MSP provisions for ESRD individuals. Accordingly, both the COBRA and MSP provisions must be clarified with respect to the treatment of both "eligible" and "entitled" individuals.

Continuation Coverage Standards for Group Health Plans.

ERISA Section 602(2)(D)(ii) is amended by striking the period after 'Social Security Act' and adding the following text: "; provided further, that the phrase 'entitled to benefits' does not include an individual who is eligible for but not enrolled for benefits under Part B of title XVIII of the Social Security Act."

Medicare As Secondary Payer Requirements of Group Health Plans.

Social Security Act Section 1862(b)(1)(A)(i)(1) is amended by: (1) inserting after the word 'employer' the following text: "is eligible for, or"; and (2) adding a new subsection at the end of as follows: "(vi) Eligible for Benefits Under This Title Defined. In this subparagraph, and subparagraph (C) the phrase 'eligible for benefits under this title' means an individual who is eligible for but not enrolled for benefits under Part B of title XVIII of the Social Security Act."

Note: Section (b)(1)(C) (relating to individuals with end stage renal disease) includes the phrase in subparagraph (i) "is **entitled to or eligible for** benefits under this title under section 226A..."

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Q-3: When may a plan terminate a qualified beneficiary's COBRA continuation coverage due to the qualified beneficiary's entitlement to Medicare benefits?

A-3: (a) If a qualified beneficiary first becomes entitled to Medicare benefits under Title XVIII of the Social Security Act (42 U.S.C. 1395-1395ggg) after the date on which COBRA continuation coverage is elected for the qualified beneficiary, then the plan may terminate the qualified beneficiary's COBRA continuation coverage upon the date on which the qualified beneficiary becomes so entitled. By contrast, if a qualified beneficiary first becomes entitled to

Medicare benefits on or before the date that COBRA continuation coverage is elected, then the qualified beneficiary's entitlement to Medicare benefits cannot be a basis for terminating the qualified beneficiary's COBRA continuation coverage.

(b) A qualified beneficiary becomes entitled to Medicare benefits upon the effective date of enrollment in either part A or B, whichever occurs earlier. Thus, merely being eligible to enroll in Medicare does not constitute being entitled to Medicare benefits.