

## COBRA Warning for People Eligible for Medicare



If you are eligible for Medicare, regardless of whether you enroll in Medicare, COBRA insurance can bite you! What is COBRA? It's a federal law, the Consolidated Omnibus Budget Reconciliation Act, that gives you the legal right to keep your employer health benefits that might otherwise end due to job loss, divorce or death. Employers of a certain size are required to offer you COBRA when you retire or leave an employer. This is the same health plan coverage you had while working. **Yet federal health benefit payment rules that apply to your employer's health benefits while you are working and eligible for Medicare are not the same after you stop working and are eligible for COBRA and Medicare at the same time.**

If you sign up for COBRA and you are eligible for Medicare at the same time, your COBRA benefits are intended to be paid after Medicare pays. COBRA carriers can decide that their benefits are secondary to Medicare's solely on the basis of your eligibility, even though you haven't actually signed up for Medicare A and/or Part B. In addition, a COBRA carrier may bill you for any benefits paid by mistake when it believes Medicare should have paid first. And if you become eligible for Medicare and sign up after you are on COBRA your COBRA benefits are likely to end. If you sign up for Medicare Part B later than 8 months after you left your job you could be subject to premium penalties for late enrollment.

*If you're already on COBRA and you become eligible for Medicare your COBRA carrier can terminate your benefits and none of this applies to you.*

*If you're **younger than 65** and have Medicare because you have permanent kidney failure (End State Renal Disease, ESRD) none of this applies to you.*

*If you are eligible for Medicare when you go on COBRA all of this applies to you.*

See more information below on the relationship between employer health benefits and Medicare.

### **If You Have Health Insurance Through an Employer While You Are Eligible for Medicare**

If you or your spouse becomes eligible for Medicare while one of you is **working** and you're covered by an employer's health benefits you'll need to know how these two benefit systems work together.

These three choices apply if you or your spouse's employer has at least 20 employees and one of you is eligible for Medicare because you're 65 years old and eligible for Medicare, or when you or your spouse's employer has 100 or more employees and one of you is eligible for Medicare because of a disability.

1. Delay signing up for Medicare and continue to use your employer's health benefits. Your benefits won't change because you're eligible for Medicare. You'll still have to pay the same premiums, deductibles and copayments for your employer plan. You can sign up for Medicare later, without a premium penalty, as long as you do it within 8 months after your employment ends.
2. Sign up for Medicare when you are eligible, pay the Part B premium and keep your employer health insurance. Your employer health insurance will pay first, but Medicare benefits can pay at least some of the costs that your employer doesn't cover such as deductibles, coinsurance, and copayments if you follow all of the rules of your employer's health plan. Medicare may pay your deductible, pay first for covered services your employer plan doesn't cover, or after you use up a benefit in your employer plan.
3. You can choose to reject your employer coverage and have Medicare as your sole medical coverage. But, your employer can't offer you any medical coverage that supplements your Medicare benefits.

### **If You're Eligible for Medicare When You Leave Employment**

If you have not previously signed up for Medicare you will need to enroll when you or your spouse stops working and your employer health benefits end. If you enrolled in Medicare Part A when first eligible because there was no premium to pay, you will still need to enroll in Medicare Part B and in Part D when you leave employment.

You have several choices when employment ends:

1. Supplemental or retiree benefits if your employer offers it: Medicare will pay first and your employer benefits may pay at least some of what Medicare doesn't pay. Your retiree coverage may or may not cover prescription drugs. If it doesn't you'll need to apply for Medicare Part D.
2. COBRA coverage: This is an extension of your existing employee health benefits, but Medicare will pay first. **COBRA benefits should only be paid after Medicare pays.** You will pay the same health insurance premium that you paid as an employee. But you'll also have to pay the portion of the premium your employer paid, plus an additional administrative cost. Some employers may pay for COBRA coverage for some period of time after your employment ends as part of a separation agreement.

**Warning:** It's important that you enroll in Medicare within 8 months after your employer health benefits end. If you don't you may have to pay Medicare late enrollment premium penalties later and have a gap in coverage before your Medicare benefits begin. If you wait to enroll in both parts of Medicare after COBRA benefits begin the carrier can terminate COBRA coverage. If a COBRA carrier mistakenly paid primary benefits for your health care expenses it could ask you to pay back any benefits it alleges should have been paid by Medicare.

If you have evidence that your employer, health plan, or one of their agents gave you false or misleading information about COBRA, or about enrolling in Medicare, you may be able to have any late enrollment penalties waived through an appeal to Medicare with a request for Equitable Relief, or through a new Special Enrollment Period (SEP) for errors by your employer, the COBRA carrier or their agents, that occurred when you were first eligible for COBRA.

3. You can buy insurance to supplement your Medicare benefits (a Medigap policy) without medical screening, or you can enroll in a Medicare Advantage plan (MA plan): If you buy a Medigap policy Medicare will pay first and a Medigap policy will pay at least some of the costs Medicare doesn't pay. You will also need to buy a Part D plan for prescription drugs. If you join a Medicare Advantage plan, the plan will provide all of your Medicare Part A (Hospital Insurance) and Medicare Part B (Medical Insurance) benefits and you will pay copayments when you use covered benefits. Some MA plans also provide Part D prescription drug benefits.

You can get help with each of these choices from a State Health Insurance Assistance Program (SHIP) in your state. The federal government funds SHIPs to help Medicare beneficiaries with issues like these.

**Follow this link to find the SHIP in your state.** <https://www.shiptacenter.org/>

**Follow this link to learn more about SHIP.** <https://acl.gov/programs/connecting-people-services/state-health-insurance-assistance-program-ship>

**NOTE:** This information is general in nature; certain restrictions or other limitations or variations may apply depending on the specific facts or events at the time. It **does not** cover instances in which you may be eligible for COBRA due to changes unrelated to leaving employment.