

**vita**

# COBRA & Medicare

Critical Information to Know



## An Important Note

It is often the case that individuals who transition from active coverage to COBRA coverage assume that group health plan coverage will stay the same on COBRA. This is not a correct assumption.

As an active employee, Medicare is most often secondary and group health plan coverage is primary. However, upon no longer being an active employee, Medicare becomes the primary coverage and COBRA becomes secondary, even if Medicare is waived or not elected. Therefore, to have comprehensive coverage, it is critical that Medicare is elected.

The purpose of this article is to provide information on some of the areas where COBRA and Medicare intersect that are complex and confusing.

## Overview

Understanding the coordination of COBRA and Medicare can be challenging. This is because there are many entwining factors that govern whether and how COBRA and Medicare will (or will not) coordinate. Specifically, there are several important issues to be aware of:

### 1. Terminology: Eligibility vs. Enrollment vs. Entitlement

These terms have specific and distinct meanings for Medicare - Being “entitled” to Medicare means being eligible *and* being enrolled.

### 2. Order is Important

The order in which you become covered determines whether COBRA is available at all - COBRA first vs. Medicare first (or vice versa).

### 3. Primary vs. Secondary Payor

Understanding which plan pays first and understanding secondary coverage is critical - Medicare primary vs. Medicare secondary.

### 4. Special Open Enrollment Period

The rules around the Medicare Special Enrollment Period are nuanced – It is available upon termination of employment but *not* once COBRA is elected.

### 5. Reason for Entitlement Matters

The reason you have become entitled to Medicare matters - Age 65 vs. disability vs. End-Stage Renal Disease (ESRD).

### 6. Part D Creditability

Knowing whether your group health plan Rx coverage is creditable vs. non-creditable is important – It may impact your Part D coverage and premiums.

# 1. Terminology: Eligibility vs. Enrollment vs. Entitlement

It is important to understand the terminology that is used with Medicare. There are three terms that are used semi-interchangeably in general insurance discussions. However, with Medicare, they each have unique meanings and address different aspects of accessing Medicare benefits.



## Eligibility

Eligibility means you are eligible for benefits under Medicare based on criteria like age and work history (or disability or ESRD).

## Enrollment

Enrollment is the process of actively signing up to receive Medicare benefits, specifically for Parts B, C, and D. Enrollment for Part A can be confusing because there are two distinct paths for enrollment. For those already receiving Social Security benefits, enrollment in Medicare Part A is automatic at age 65 (there is no “sign up” process if you are receiving SS benefits). Alternatively, for those who are eligible for but have deferred receiving Social Security retirement benefits, there is an application process for Part A.

## Entitlement

Entitlement means you are eligible for Medicare and are enrolled in either Part A or Part B. Merely being eligible to enroll in Medicare does not constitute being “entitled” to Medicare benefits.

## The Confusing Part

It is entitlement to benefits under Medicare that governs the interaction with COBRA coverage. This can be confusing because sometimes individuals can be entitled (eligible and enrolled) without actually taking action to enroll. For example, Medicare coverage can be automatic for Part A if an individual is receiving Social Security benefits. The issue to be aware of is that the COBRA rules are triggered based on *entitlement*, whether or not an active enrollment is required.

## 2. Order is Important

Timing is everything with Medicare and COBRA. Specifically, the order in which you get covered matters – COBRA first vs. Medicare first. How COBRA and Medicare coordinate and whether you can continue with both plans depends on which insurance coverage is in force first.

### **COBRA First, then Become Entitled to Medicare = No COBRA**

If you are covered under COBRA and subsequently become entitled to Medicare, becoming entitled to Medicare is a disqualifying event for your COBRA coverage. This means you can no longer continue your coverage under COBRA after the date you become eligible for Medicare.

- ✓ In this case, you should enroll in Part B and Part D immediately when you become Medicare-eligible as you will not be entitled to a Special Enrollment Period (SEP) under Medicare when COBRA ends.
- ✓ Your covered spouse and dependents may retain their COBRA coverage through their normal COBRA coverage duration, regardless of whether you enroll in Medicare.

### **Medicare First, then Become Eligible for COBRA**

If you have Medicare Part A or Part B when you experience a COBRA Qualifying Event, you may keep your Medicare and enroll in COBRA coverage, as well.

- ✓ When you have both Medicare and COBRA group health insurance, Medicare is your primary insurance, and COBRA is secondary. See the section below on Primary vs. Secondary payor for a more detailed description of the potential issues.
- ✓ If Medicare Part A or B is effective on or before the date you elect COBRA, your group health plan cannot discontinue your COBRA coverage because of Medicare, even if you enroll in the other part of Medicare after you elect COBRA coverage.
- ✓ Important Note About Cost: While you CAN keep COBRA coverage and Medicare in this situation, it is rarely cost effective to do so. Your COBRA coverage will generally be the secondary payor so often you will receive little to no benefit from your COBRA plan. In other words, just because you can keep both, doesn't mean it is necessarily a good idea.

### 3. Primary vs. Secondary Payor

When you're eligible for both COBRA and Medicare, understanding how these two interact is crucial to ensure comprehensive health coverage and avoid unexpected medical expenses. There is a set of rules that govern when a group health plan must pay primary and when it may pay secondary to Medicare. These are referred to as Medicare Secondary Payor (MSP) rules.

#### Primary/Secondary Rule as Active Employee

Importantly, as an active employee of an employer with more than 20 employees, the group plan is generally primary, and Medicare is secondary. This rule applies even when the covered employee is working and over age 65. Because Medicare is secondary, many working individuals over age 65 do not elect coverage under Medicare . . . because group health plan coverage is fully comprehensive without Medicare coverage.

#### The Rules Change upon Termination of Employment

Special rules determine whether Medicare is the primary payor or the secondary payor when you are covered under both group health plan and Medicare. However, those rules will CHANGE after you stop working and are eligible for both COBRA and Medicare.

#### Primary/Secondary Rule as COBRA Qualified Beneficiary

Once employment terminates (and COBRA is activated), the rules change. Medicare becomes primary, and COBRA coverage becomes the secondary payor. The fact that this change occurs at the same time as becoming eligible under COBRA routinely creates confusion for people.

#### Phantom Coordination of Benefits

The coordination of benefits between Medicare and COBRA when a participant is not enrolled in Medicare is sometimes referred to as “phantom” coordination of benefits. Under COBRA, when Medicare pays primary to COBRA coverage, the group health plan will only pay benefits in the amount that the plan would have paid *had the COBRA Qualified Beneficiary enrolled in Medicare*, even if the COBRA qualified beneficiary was not actually enrolled in Medicare. This means that these individuals must pay out-of-pocket for the expenses that Medicare would have paid assuming they were enrolled in Medicare.

#### How Does Phantom Secondary Coverage Work?

When Medicare is primary and COBRA coverage is secondary, this does NOT mean that it “fills in the gaps” and provides you 100% coverage (between the two plans). Rather, each plan calculates what it would pay independently. The primary plan pays, then the secondary plan pays any amount that it would have paid, less the amount the primary plan already paid. In some cases, there is no payment from the secondary plan (if the primary plan already paid more than the secondary plan would have paid had it been the only coverage).

The following example illustrates how Medicare primary/COBRA secondary coverage works:

Medicare Payment Calculation	
<b>Billed Charges</b>	\$20,000
<b>Medicare Allowed Charge (MAC)</b> <i>Hypothetical</i>	\$13,000
<b>Medicare Pays (80% of MAC)</b>	\$10,400
<b>Your Out-of-Pocket Expense with Medicare</b>	\$2,600
COBRA Coverage Payment Calculation	
<b>COBRA Plan Allowed Charge</b> <i>Hypothetical</i>	\$13,500
<b>COBRA Plan calculates what it WOULD have paid if it were primary</b> <i>(Example of 80% of COBRA Plan Allowed Charge)</i>	\$10,800
<b>COBRA Plan Pays</b>	\$ 400
<i>What COBRA Plan would have Paid</i> \$10,800 <i>Less What Medicare Already Paid</i> - \$10,400	
<b>Your Net Out of Pocket Expense</b>	\$2,200
<i>Your out of pocket with Medicare</i> \$2,600 <i>Less What the COBRA Plan Paid</i> - \$ 400	

It is important to recognize that, in this situation, you will be paying a full COBRA premium for what is often a very minor “coordinated benefit” under a COBRA plan.

### What Happens without Medicare?

When Medicare is primary and COBRA is secondary, you should NOT drop your Medicare coverage. When COBRA is secondary, COBRA coverage will pay AS IF Medicare coverage is in place . . . even if you have not actually signed up for Medicare.

In the above example, your COBRA coverage would pay the exact same amount (\$400). You would owe all of what the Medicare primary coverage was supposed to have paid (but didn't if you didn't have Medicare coverage).

The following example further illustrates how Medicare primary/COBRA secondary coverage works:

**Phantom Coordination of Benefits  
Medicare Payment Calculation – With No Medicare Enrollment**

<b>Medicare Allowed Charge (MAC)</b> <i>Hypothetical</i>		\$13,000
<b>Medicare Supposed to Pay (80% of MAC)</b>	<b>You Would Owe This →</b>	\$10,400
<b>Out of Pocket Expense with Medicare</b>	<b>And This →</b>	\$2,600

**You would  
owe the full  
\$13,000**

### **Sign Up for Medicare Upon Termination of Employment**

If you are over age 65, it is important to sign up for Medicare Part A, Part B, and Part D when you stop working and you are no longer accessing your group health plan coverage as a function of you (or your spouse) being an *active* employee. This recommendation applies even if you choose to elect coverage under COBRA. COBRA coverage will pay secondary to Medicare and will subtract what they calculate Medicare would have paid, even if you are not enrolled. In addition, if you delay enrollment in Medicare, you may be required to pay late enrollment premium penalties and have a waiting period imposed before your Medicare benefits can begin.

## 4. Special Enrollment Period (SEP)

Generally, if you do not enroll in Part B or Part D when you are first eligible for the coverage, you must pay more in Medicare premiums when you do enroll. However, if you defer signing up for Medicare at your initial enrollment period because you are covered by a group health plan, you will have a Special Enrollment Period upon termination of group health insurance based on active enrollment.

### SEP Doesn't Apply after any COBRA

The termination of group health insurance which triggers a Special Enrollment Period means that you (or your spouse if covered as your dependent) are no longer receiving group health plan coverage pursuant to *active employment*. Importantly, coverage under COBRA is NOT based on active employment, so the Special Enrollment Period opportunity is not available once you have elected coverage under COBRA. It is only available at the time of termination of employment.

### What is the Special Enrollment Period?

The Special Enrollment Period allows individuals to enroll in Medicare at times other than the General Enrollment Period (see below) without facing any late enrollment penalties. Specifically, if you have deferred Medicare coverage due to having group health plan coverage, you are afforded a future Special Enrollment Period when:

- ✓ You elect to enroll in Medicare while still covered by the group health plan
- ✓ During the 8-month period that begins the month after your employment ends or your coverage ends, whichever happens first.

### What is the Medicare General Enrollment Period

The Medicare General Enrollment Period is the three-month period from January 1st to March 31st each year. During the General Enrollment Period you can sign up for Medicare Part B if you missed your initial enrollment period. (You can also purchase Part A during this time if you don't qualify for premium-free Part A and you missed your Initial Enrollment Period.) You may have to pay a premium surcharge for Part A and/or Part B in the case of a late enrollment. When you sign up during the General Enrollment Period, your coverage starts the first day of the month after you sign up.

### When does Coverage Start?

When you sign up during a Special Enrollment Period, your coverage generally starts the first day of the month after you sign up. If you sign up for Part B while you're still working, or within the first full month after losing employer coverage, you can request to delay your Part B start date up to 3 months.

### What about Late Enrollment Penalties?

You usually won't have to pay a late enrollment penalty if you sign up during a Special Enrollment Period. Late enrollment penalties are typically applied when you sign up for Medicare at the General Enrollment Period if you have had a gap in coverage. This Special Enrollment Period does not apply if you're eligible for Medicare based on End-Stage Renal Disease (ESRD), or you're still in your Initial Enrollment Period.

### Impact of Electing COBRA with Medicare

If you elect COBRA coverage and do not enroll in Medicare Part B when first eligible, you will not have special enrollment rights under Part B whenever you terminate COBRA coverage. In addition, you may expect to pay higher Part B premiums when your COBRA coverage ends, and you transfer to Medicare coverage.



## 5. Reason for Entitlement Matters

Individuals become entitled to Medicare in three ways: Age 65, disability, and End-Stage Renal Disease (ESRD). The reason for Medicare entitlement impacts how Medicare coordinates with COBRA coverage. The following is an overview of how COBRA interacts with Medicare when the reason for entitlement is not age 65.

### Medicare because of ESRD

Medicare for those with End-Stage Renal Disease (ESRD Medicare) provides health coverage if you have permanent kidney failure that requires dialysis or a kidney transplant. ESRD Medicare covers a range of services to treat kidney failure.

### COBRA Primary to ESRD Medicare for 30 Months.

If you are eligible for Medicare due to ESRD, your COBRA coverage is primary during the 30-month coordination period. If you have employer-sponsored insurance as an active employee, retiree, or COBRA qualified beneficiary when you become eligible for ESRD Medicare, you can delay enrollment in Medicare until the 30-month period expires. Your group health plan (active, retiree or COBRA) coverage will remain primary for 30 months, beginning the month you first become eligible for ESRD Medicare. This is called the 30-month coordination period. After 30 months, group health plans will pay secondary to Medicare, even if you have not enrolled in ESRD Medicare. During the 30-month coordination period:

- ✓ You do not have to sign up for ESRD Medicare immediately if you have group health plan/COBRA coverage.
- ✓ Your group health plan/COBRA coverage must pay first, and ESRD Medicare may pay second for your health care costs.
- ✓ If you do not have other insurance, ESRD Medicare will pay primary as soon as you enroll.

### Medicare because of Disability.

If you are under age 65 and become eligible for Medicare because of a disability, different rules apply based on the size of the employer group health plan and whether you are an active employee or a COBRA qualified beneficiary.

- ✓ If you are an active employee covered by a large employer (100+ employees), Medicare is secondary.
- ✓ If you are an active employee covered by a small employer (fewer than 100 employees), Medicare is primary.
- ✓ If you are a COBRA qualified beneficiary, Medicare is the primary payor and COBRA coverage is the secondary payor regardless of group size.
- ✓ If you were disabled and covered under a large group health plan (100+ employees) and then become covered under COBRA, Medicare will change from secondary to primary.

Note that the 100 employee threshold for Medicare disability coordination is determined by whether an employer employed 100+ employees on 50% of its business days during the previous calendar year. This counts includes all employees worldwide.

## 6. Part D Creditability

For Medicare Part D coverage, there is a concept called creditability for Rx coverage under group health plans.

- ✓ **Creditable:** Prescription drug coverage is creditable if the actuarial value of the Rx coverage equals or exceeds the actuarial value of standard Medicare Part D coverage.
- ✓ **Non-Creditable:** Prescription drug coverage is non-creditable if the actuarial value of the Rx coverage is less than the actuarial value of standard Medicare Part D coverage.

### Why is it Important?

Knowing whether your prescription drug coverage is creditable or non-creditable is important because it enables you to make informed decisions about whether to retain your employer-sponsored prescription drug plan or enroll in Medicare Part D coverage during the Part D annual enrollment period.

### How Will I Find Out?

Medicare requires group health plan sponsors to provide a notice to Medicare-eligible individuals as to whether the plan's coverage is "creditable" or "non-creditable." You can look for this information in the Notice of Credible Coverage.

### Consequences

If you do not enroll in Medicare Part D during your initial enrollment period and subsequently go at least 63 consecutive days without creditable coverage (because you have either no Rx coverage or non-creditable group coverage), you will be subject to a premium surcharge when you enroll in a Medicare drug plan later.

### Premium Penalty Amount

The premium penalty is equal to 1% of the Medicare Part D base premium for each month of delayed enrollment. The monthly penalty is cumulative so, for example, if you go 19 months without creditable Part D coverage, the monthly Part D premium would be up to 19% higher than the Medicare Part D base premium. This premium increase is permanent.

### Interaction with COBRA

Part D coverage follows the same Medicare Secondary Payor rules that apply to Part A and Part B. Therefore, it is typically prudent to enroll in Part D coverage at the same time as Part A and Part B. The Medicare Secondary Payor rules that direct Medicare to pay primary under COBRA also apply to Part D coverage. As such, if you rely on COBRA for prescription coverage, you will face the same coverage gap issues as under Part A and B.

# Conclusion

By understanding how COBRA and Medicare coordinate, you can make informed decisions to ensure continuous and comprehensive health coverage.

# Resources

- [Medicare and You Guidebook](#)
- [Centers for Medicare and Medicaid Services \(CMS\) Information on COBRA](#)

