



CALIFORNIA HEALTH ADVOCATES
Medicare: Policy, Advocacy and Education

How COBRA Bites Medicare Beneficiaries



NAIC Spring Meeting 2019
Senior Issues Task Force
Presented The Topic (not the slides)

NAIC Spring National Meeting 2020
Consumer Liaison
This Presentation

NAIC Spring Meeting 2022
Senior Issues Task Force
August 10, 2022
This presentation

COBRA And New Medicare SEP (CMS-4199-P)

- CMS proposed rule:
 - **New SEP for Health Plan or Employer Error**
 - Provides relief in instances where an individual *can demonstrate* that their employer or health plan, or agent
 - “*materially misrepresented information* related to enrolling in Medicare timely”.
 - **Benefits of this narrow SEP**
 - Avoids waiting to enroll during GEP (January thru March)
 - Avoids late enrollment penalty (10% per 12 month period)
 - Avoids gap in coverage
 - No waiting until July for Medicare Part B coverage to begin
 - Medigap guaranteed issue event

Problem?

- CMS proposed rule and Evidentiary Standard:
 - **Must demonstrate material misrepresentation:** Individuals would be required to provide SSA or CMS evidence that shows what misinformation was initially provided by the employer, GHP or representative
 - Those tasked with providing information and guidance, employers and their agents, including HR firms, agents/brokers often do not understand the complex rules involving Medicare and COBRA coverage
 - **Material misrepresentation difficult to document and prove**
 - Most information about COBRA **occurs in verbal conversations** with HR or other representatives
 - Employers unlikely to state misrepresentation in writing
 - **Proposed evidentiary standard should be revised**

Actual Case Example

- 76 year old man leaves employment
 - Signed up for Medicare Part A at age 65
 - Doesn't have Part B
 - Employer is large group health benefits consultant
 - Employer provides 8 months free COBRA
 - Part of separation agreement
 - Lots of verbal instruction
 - COBRA carrier is large group health benefits company
 - Pays COBRA primary benefits
 - 6 months post-retirement COBRA carrier discovers:
 - Eligibility for Medicare, but not enrolled for benefits
 - Client has had large medical expenses
 - Recovery for \$80,000 +/- of primary COBRA paid benefits

COBRA: Secondary To Medicare

- COBRA same as primary health benefits
 - Same benefits as employed
 - Former employee pays
 - 100% of premium plus admin fee
 - With or without Medicare benefits
 - Medicare Secondary Payer rules don't apply
 - COBRA is automatically secondary
 - Primary paid benefit payments are recoverable
 - If **eligible** for Medicare, regardless of enrollment
 - If Medicare enrollment after COBRA begins
 - COBRA ends

Medicare: Eligible or Enrolled?

- Disconnect between Social Security and Medicare
 - Medicare at age 65
 - SSA not until age 67
 - *No federal Medicare notice at age 65*
- Failure to enroll in Medicare while working
 - Doesn't understand eligibility, or
 - Rejects added Medicare premium cost for secondary coverage
- Stops working (*No Medicare notice*)
 - 8 month SEP to enroll in Medicare without penalty
 - If SEP window not met
 - Lifelong premium penalties (10% per 12 months)
 - Restricted Part B enrollment window (Jan-Feb each year)
 - Benefits delayed after enrollment (until July)
 - **New SEP?** Written documentation of misrepresentation

NAIC Model Regulation MO-120

Coordination of Benefits

- Use of Model COB Contract Provision
 - Section 5 prohibits reduction of benefits to secondary payment;
 - *No other health benefits can be taken into account to reduce payment of health plan benefits, **unless***
 - D(2)“an individual is or could have been covered by another plan, **except with respect to Medicare Part B**”
 - **This is the only exception that allows reduced payment of secondary benefits in the Model**

Proposed Revision

Discriminatory NAIC Model COB Contract Provision

Section 5 D: A COB provision may not be used that permits a plan to reduce its benefits on the basis that:

(1) Another plan exists and the covered person did not enroll in that plan;

(2) A person is or could have been covered under another plan, ~~except with respect to Part B of Medicare;~~ or (*delete as indicated*)

(3) A person has elected an option under another plan providing a lower level of benefits than another option that could have been elected; **or**

(4) A person is eligible but not enrolled for benefits in Part B of Medicare. (*add as indicated*)

Questions?



Contact Information:

Bonnie Burns, Consultant
California Health Advocates
831-438-6677 (office)
bburns@cahealthadvocates.org
www.cahealthadvocates.org