



Interpretive Memorandum No. 2013-5

DATE: **REVISED August 2, 2022** (Originally issued June 20, 2013, revised August 17, 2015)

TOPIC: **MEDICAL SUBSIDY, MEDICARE ENTITLEMENT AND END STAGE RENAL DISEASE**

PURPOSE:

The purpose of this memorandum is to discuss how the medical subsidy eligibility rules apply when a retiree has Medicare coverage because he or she has end stage renal disease (ESRD).

SUMMARY:

In situations where a Retiree¹ becomes entitled to Medicare because of ESRD prior to becoming entitled by virtue of attaining age 65, and at that time is covered under an Employer's plan for active employees, the Employer's plan remains the primary coverage for the first 30 months, even if the retiree reaches age 65 during the 30 month period. Therefore, the Medical Subsidy amount should not be reduced until the 30-month period has expired, even if the Retiree has attained age 65.

ANALYSIS

RSA 100-A: 52, II, provides that the amount of the Medical Subsidy benefit shall be reduced if a Retiree is "entitled to Medicare".² The premise of this rule is that, upon entitlement to Medicare, the Employer will transfer the Retiree from full coverage under the plan for active employees to a Medicare supplemental coverage for which the premiums are less.

The Medicare Secondary Payer rules³ provide that, for active employees over age 65, a group health plan is the primary coverage and Medicare is the secondary coverage for active employees over the age of 65, and the Employer cannot transfer active employees to Medicare supplement coverage just because they attain age 65.

¹ Capitalized terms shall have the meanings as provided in the Interpretive Memoranda Glossary of Terms

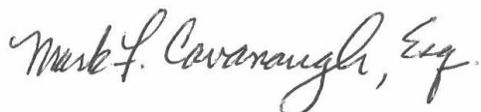
² For a discussion of the meaning of the term "entitled to Medicare", see Interpretive Memorandum 2015-5.

³ Section 1862(b) of the Social Security Act, 42 U.S.C. 1395y(b), et. seq.

For Retirees age 65 and above, the general rule is that Medicare is the primary coverage and the Medicare supplemental group health plan is the secondary coverage.

Nevertheless, there is an exception to the general rule for persons who are covered by Medicare because they have ESRD. In that situation, if the retiree is covered under the employer's plan's primary coverage for active employees at the time they become eligible for Medicare because of ESRD, the employer-provided plan remains the primary coverage for the first 30 months of Medicare coverage even if the Retiree later attains age 65. The 30-month period begins on the earlier of the first date on which the person was actually covered by Medicare Part A or the date he or she would have been covered if he or she had filed an application in a timely manner.⁴ The group health plan remains the primary coverage throughout the 30-month period even if the individual also becomes eligible for Medicare by virtue of attaining age 65 during that 30-month period.⁵ Therefore, the Medical Subsidy benefit should not be reduced until the expiration of the 30-month period.

There is an exception to the exception for retired individuals who become entitled to Medicare by virtue of age or disability prior to also being entitled by virtue of ESRD. In those cases, the 30-month rule does not apply and the group health plan remains the secondary coverage; and, consequently, the reduced Medical Subsidy amount applies.



8/2/2022

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Approval Date

⁴ Section 1862(b)(1)(C) of the Social Security Act, 42 U.S.C. 1395y(b)(1)(C), et. seq.; See also 42 CFR 411.162(b)(2)(i).

⁵ See 42 CFR 411.163(b)(4).