



Interpretive Memorandum No. 2013-5

DATE: REVISED AUGUST 17, 2015 (Originally issued June 20, 2013)

POLICY TOPIC: MEDICARE ENTITLEMENT; END STAGE RENAL DISEASE AND THE MEDICARE SECONDARY PAYER RULES

QUESTION/SCENARIO DISCUSSION:

An Employer notified NHRS that a Retiree had attained age 65. The correspondence included a Medicare card that showed that the Retiree had been covered by Medicare for over two years. A letter was then sent by NHRS to the Retiree notifying him that the Medical Subsidy benefit had been overpaid dating back to the Medicare entitlement date. The Retiree sent a letter to NHRS stating that he was entitled to Medicare because he had “end stage renal disease” and, in those situations, the Employer’s plan remains the primary coverage. Therefore, the Retiree remained covered with full benefits under the Employer’s plan rather than Medicare supplemental benefits; and, consequently, the Medical Subsidy benefit should not have been reduced.

CONCLUSION:

In situations where a Retiree becomes entitled to Medicare because of end stage renal disease prior to becoming entitled by virtue of attaining age 65, the Employer’s plan remains the primary coverage for the first 30 months dating back to the first month that the Retiree was actually covered by Medicare Part A or, if earlier, the first month he or she would have been covered if an application for coverage had been filed in a timely manner. 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”.¹ The premise of this rule is that, upon entitlement to Medicare, the Employer will transfer the Retiree from full coverage under the plan to a Medicare supplemental coverage for which the premiums are less. The Medicare Secondary Payer rules² provide, generally, that an employer-provided group

¹ For a discussion of the meaning of the term “entitled to Medicare”, see Interpretive Memorandum 2015-5.

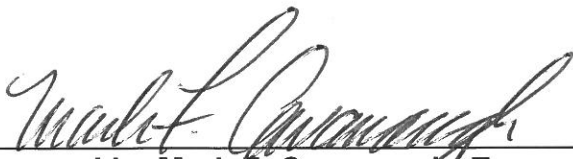
² Section 1862(b) of the Social Security Act, 42 U.S.C. 1395y(b), et. seq.

means that the 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. However, this rule does not apply to Retirees because they are not covered “by virtue of [their] current employment status”. For Retirees age 65 and above, Medicare is the primary coverage and the employer-sponsored group health plan is the secondary coverage.

However, there is an exception to the general rule for persons who are covered by Medicare because they have end stage renal disease. In that situation, the employer-provided group health plan is the primary coverage for the first 30 months of Medicare coverage regardless of whether the individual is an active employee or a Retiree. 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.³ 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.⁴ 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 end stage renal disease. 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.

STATUTORY REFERENCE: RSA 100-A:52, II; 42 U.S.C. 1395y(b), et. seq.



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Approval Date

³ 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).

⁴ See 42 CFR 411.163(b)(4).