

XXXX XX, 2023

These congressional letters will go to House and Senate leadership as well as the chairs and rankings of the relevant committees.

Dear :

On behalf of The National Association of Insurance Commissioners (NAIC), the standard setting organization representing the chief insurance regulators in the 50 states, the District of Columbia, and the United States territories, we write to you regarding the confusion and costly expenses some workers and retirees are facing with the transition to coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) accompanied by eligibility for Medicare.

As you are aware, COBRA grants temporary continuation of coverage to individuals enrolled in group health plans when coverage would otherwise end upon the occurrence of a qualifying event. For individuals who are eligible or enrolled in Medicare when COBRA coverage begins, Medicare is the primary payer and COBRA plans become secondary.

However, for individuals that qualify for COBRA and are eligible for Medicare but have not yet enrolled in either Medicare Part A or Medicare Part B, group health plans may recoup any paid claims and many workers and retirees are not aware of their Medicare eligibility or the need to enroll in the program, even if one is still employed. As a result, many workers and retirees find themselves facing out-of-pocket costs for claims paid under COBRA benefits due to their Medicare eligibility, as well as penalties for late enrollment in Medicare.

An example brought to our attention is of a gentleman who signed up for Medicare Part A at age 65 but did not sign up for Part B as he was still working. At age 76, he left employment and his employer provided eight months of COBRA as part of his separation agreement. The COBRA carrier paid benefits as the primary plan, but after six months the carrier discovered the gentleman was *eligible* for Medicare but was not *enrolled* for benefits. The gentleman had large medical expenses during this time and the carrier sought recovery for \$80,000 of benefits paid by COBRA.

Medicare enrollment and penalties, secondary payment rules, and COBRA are confusing, and we have heard some suggestions to help consumers better navigate these rules. One is better coordination between the Departments of Labor (DOL) and Health and Human Services (HHS). As you are aware, COBRA notices issued by DOL are not required under COBRA nor mentioned under Medicare. Another suggestion is for additional clarification in the law as to which coverage, Medicare or COBRA, is primary and which is secondary in these situations.

The NAIC requests you to examine this issue and we, as the state insurance regulators, are prepared to work with you to find solutions to aid and help our workers and retirees navigate this confusing interaction between COBRA and Medicare.

Sincerely,

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